[Shri S. V. Krishnamoorthy Rao.] only production of document is necessary, some officer has to go, but he may not be a high officer. You can decide it in consultation . . .

DR. R. B. GOUR: The commission can come here.

SHRI S. V." KRISHNAMOORTHY RAO: The commission can also come here. But that means greater expense. It should be left to the court to decide. It is the function of the court to decide whether a commission would be sufficient or an officer should be sent. I think we should not usurp the functions of the court in this matter. After all, we should work in co-operation— both the legislature and the judiciary—and I think the procedure that we have suggested is quite proper. I hope the House will approve of the Report and the procedure suggested'therein.

MR. CHAIRMAN: The question is:

"That at the end . of the Motion the following be added, namely: —

'and having considered the same the House agrees with the recommendations contained in the Report'."

The motion was adopted.

MR. CHAIRMAN: The question is:

"That the First Report of the Committee of Privileges laid on the Table of the House on the 1st May, 1958, be taken into consideration, and having considered the same, the House agrees with the recommendations contained in the Report."

The motion was adopted.

THE PROBATION OF OFFENDERS BILL, 1958.

MR. CHAIRMAN: Mrs. Alva. A hard day for you.

THE DEPUTY MINISTER OF HOME AFFAIRS (SHRIMATI VIOLET ALVA) : Welcome, Sir. I move:

"That the tsui to provide ior tne release of offenders on probation or after due admonition and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration."

It is a very different problem now that we shall debate ■ today. From Scheduled Castes and Scheduled Tribes and *Vimukta Jatis,* we now come to that class in our society who are called offenders—rightly or wrongly—and have to be placed before courts of law. This Bill has been before this House once before. It went to the Joint Select Committee and it is here today for the opinion of this House and finally for its adoption. Probation is not a new thing in the world today, since the idea of penology and criminology has been changing based on scientific research in the iast half a century or more. There are many countries that have gone far ahead on this subject and they have undertaken, or shall I say, they have ventured to undertake, that the human mind is far too intricate and, therefore, those whom we call criminals should be treated as diseased men or women. While discussing this Bill, I want the House to bear in mind thr.t it is not a new measure in India or before this House. It was as far back as 1923 when the Criminal Procedure Code was amended first and a provision was put in there, by which the first offenders, not under 21, for offences punishable with not more than seven years could be given probation; and under 21, any woman for offences not punishable with death or transportation for life, could be considered under the scope of the measure that is before us today. From time to time it went to the Jails Committees. The jail reformers were there. Everyone felt that the jails only hardened a criminal, whether he is real or unreal; that the jails do not provide sufficient scope for his reformation or rehabilitation in society. It was felt so from time to time till we reached 1925 when the Conference of Inspectors-General of Prisons told the Central Government then that there should be a Central measure by which probation

should become the law of the country. However, the then Government being too pre-occupied sent back messages £a the States that they left it to each State to improve upon this measure, the idea underlying the reforms of the jail system and the reforms in the field of penology and criminology. After tha^ the States were not found wanting in the sense that the various States took up this measure and today the law of probation exists in many of our premier States. It has shown us that it does good. It has proved to us that there is no harm. There will be a number of Members who will doubt the need to put this measure on our Statute Book. But I want to assure them that by probation or by admonition, please do not run away with the idea that the criminals will be let loose in the streets. Nothing of the sort. To understand that, you have to go back to those States that have this enactment on their Statute Book, which is being enforced even today. After Dr. Reckless came in 1952 and also followed up by our own Jail Reforms Committee, it was decided that this is in 'the Concurrent List of the Constitution and, therefore, a Central measure would certainly suit the vastness of this country and it would assist even the Territories and the other States that do not have this law, to take it up as a useful measure, to look into the system of probation.

12 NOON

Sir, Members will ask, "What , is admonition for a man who commits a crime; what is probation for a man who injures his fellow-man?" But may I a?k them, "What is this term, this stigma, that we attach to a man —or a woman—if his offence be trivial, even if he be an erring citizen, giving him no chance for the rest of his life to go back to normalcy in our society or for employment?" This curse we want to remove from the society and we do not want to do it in a manner which will threaten the society- We are going to make it a discretionary measure for the courts and we are going to introduce a new agency in the courts by which the Bench will be able to decide for itself whether the offender that stands before the bar is suitable enough for this purpose, looking into his character, his environment, his training,- his circumstances and his mental make-up or whether such a man should go behind prison bars and not come back, as a man lost to society for ever. May I ask Who gives a man a chance for employment? Very often, even his own family does not want him. Very often he goes back because there is ro place for him outside, in the society. He feels himself lost to society. The moment prison doors are opened for him, he yearns to go back and, therefore, the first offender becomes a habitual offender and the habitual offender becomes a hardened criminal, for there is no salvation for him. We want to devise a scheme by which, according to the discretion of the court and with the help of the probation officer, we shall be able to examine case by case and see how many we can reclaim. If this be our conviction that jails cannot help all the offenders, there is no reason why we should, not adopt this new system; if jails do not help or reform the offenders, we shall reform them in their own society, in their own environment, in the particular environment of the particular offender.

Who is a probation officer? There is a mistaken, notion about it in this august House as it was in the other august House and outside. I may be forgiven if I say that this mistaken notion is most prevalent amongst veteran lawyers. It is hard for the veteran lawyer to understand what is probation. He only knows how to argue a brief. He only knows that injustice is done.

SHRI AKBAR ALI KHAN (Andhra Pradesh): You have a poor opinion about lawyers.

MR. CHAIRMAN: She herself is a lawyer.

SHRIMATI VIOLET ALVA: Including myself.

[Shrimati Violet Alva.] There is this opinion on account of which we have found great difficulty in gathering their convictions on to our side. Maybe, their practice in the law courts makes them convinced that this isnot a suitable measure; maybe, they still believe in the deterrent method of "a tooth for a tooth and an eye for an eye". But no more do we believe in the old-fashioned methods where it will be a tooth for a tooth or an eye for' an eye. We, fathers and mothers, have forgotten and do not believe any more in the saying, "Spare the rod and spoil the child." We,, mothers, know how to bring up children without using the rod. So, I do not see any reason why we should not bring up the offenders without prison bars and why there should be a conviction in every case and why there should not be a reformation or an attempt to reform them. Probation is not conviction. Probation is only a suspended sentence and I do want to press before the House how it comes about.

The question of probation only comes in when evidence is collected in the court, when evidence is laid, when the Bench is satisfied whether a man is guilty or not. Probation and admonition arise only when a man is found guilty. If he is not found guilty, he goes away. In our cour-ts of law, we have seen that even the accused are often given the benefit of doubt and discharged, because cases come in such large numbers. When a man is found guilty then it is for the court to make up its mind whether that man—or woman—if he is sent back to his own environment and to his own family, would reform himself and become a useful citizen or whether he must go to prison. So, the judge only suspends the sentence. He says hat this man should be given an admonition and off he goes. Off he goes where? To the court of the probation officer. The probation officer is not a policeman. He is a guardian. The probation officer has been misunderstood here and there to^be a policeman. Not at all. There is a doubt and a reflection cast on the type of probation officers th^t we have in this country, that they themselves will take bribes along with the witnesses, that they will not come forward and that they will twist and* turn evidence and all that. I think that is very wrong and a great injustice done to even the small probation services that we have today in cities to look after children. I have seen the probation officer at work in Bombay. He is indeed a friend, philosopher and guide to the child. Prof. Wadia will bear me out that in Bombay—because this lies in his sphere— the Children's Court works very efficiently. Case-file by case-file is prepared about every child. How many weeks and months of effort are taken to find out the environment of the child, the earning capacity of his father and mother, his house, his place and from where he comes! A lot of effort is being made and we are able to rehabilitate him, let me say, to a great extent. If we can do that with regard to children, why should we not get the same perfect type of element for our adult offenders? Therefore, if the court thinks that admonition is not enough and that a man cannot go back to society with admonition, it may decide that probation be granted to him for one year, two years or three years and that the man be sent back to society, to his home. Here again, I want the House not to confuse themselves with the 'after-care programme* and the 'probation programme' In the other House, Member after Member mixed up 'after-care' and 'probation'. 'After-care' is for those people who get out of prisons, who go out of certified schools or Borstal institutions or any other correctional institute. But 'prorTation' means that we do not send the man or the woman to any institute of correction; we send him home and keep a vigilant and watchful eye on what he is doing and how we can rehabilitate him. It is a great task and the guardian is like a missionary. He follows the offender and tries to rehabilitate him wherever he happens to be.

If he has a suspended sentence, what happens? Suppose a man who is on-

probation manifests 'misconduct or goes wrong or becomes a danger to society, then again, the case is brought back to the court and he gets his original sentence and goes to prison. It is only a method which was already in the Criminal Procedure Code. We want to extend the benefit of that provision and see how it is spread all over the country and how it would work in the new sense here, because all the progressive countries of. the world have this system and this is working well there.

Sir, I do not want that I should spend more time on this. There is the hon. Shri Madhava Menon who, in hi; own State, has seen how effectively this measure has operated. With such people around us who have gathered experience ^and are fully convinced of this and with such experts, I do not see why we should have any doubts about the succe3s of this system. Last time, when I introduced this measure here, I referred to the fact that Dr. Reckless came to India, went through our jail administration, had discussions and conferences with our experts, sociologists, psychologists and psychiatrists and finally, he came to the conclusion that the human material inside our prison was good material according to him because he had seen prisons of many countries. And he said that here in India it is very good material that goes to the prison. Why? Because of the socioeconomic conditions. But why should they go to the prison and come back with a stigma? And, therefore, he suggested along with our own experts that the time is ripe for the Central Government to adopt this measure and hand it over to the various States.

DR. W. S. BARLINGAY (Bombay): May I just ask one question? I want to understand the propriety of subclause (3) of clause 1, which says:

> "It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State."

Why should not this measure come into force in all the States at once?

SHRIMATI VIOLET ALVA: Sir, it is because in some States the law is already there. We do not want to impose this overnight, for the simple reason that the background of this measure is probation and the necessary equipment that must be there before this law is enforced will take time, and each State will have to get ready. I can understand the mind of the hon. Member. He thinks that the machinery should be ready and then the law should be made. But unless the law is made, no machinery can come forward. Who is going to prepare it? Wherever there is the law, the machinery, in its infancy, is there and there are agencies for training these probation officers. And, therefore, this clause has been inserted by the Select Committee.

Now, Sir, I shall explain the various clauses contained in this Bill. In clauses 3 and 4 we have avoided the use of the word 'convicted', because this very word 'convicted' is a revolting one in such a measure. Instead, we have said 'found guilty*. When a man is convicted, he goes to> prison. *(Interruption.)* If I am convicted of an offence, what follows? The sentence follows. But in the case of the words 'found guilty' it need not follow. Therefore, in these clauses, i.e. clause 3 and clause 4, we have kept the words 'found guilty', because the Select Committee has decided that the word 'convicted' should not be used. Then, Sir, in these two clauses, the distinctions based on age and sex as mentioned in section 562 of the Criminal Procedure Code are avoided.

DR! W. S. BARLINGAY: What is the difference between 'convicted' and 'found guilty'?

SHRIMATI VIOLET ALVA: The word 'convicted' has a certain meaning in common parlance. You are an advocate and you know it. The term 'found guilty' also may mean the same thing,, but it has a different flavour.

DR. W. S. BARLINGAY: No flavours here.

SHRIMATI VIOLET ALVA: Sir, when the clause by clause consideration of the Bill comes before us, I will be • able to satisfy the House then and they can then say whether they still prefer the word 'convicted' to the words 'found guilty'. Sir, for clause 3, 'previous conviction' would also include the order made under clauses 3 or 4 of this Bill. We have tried to analyse that and re-arrange these clauses. Then under clause 4 probation is available to all, not only to first offenders as in the Criminal Procedure Code. We have tried to extend it to_ others also. And finally, Sir, in this clause probation officers have been provided for, which is not done in the Criminal Procedure Code. When there is a clause by clause discussion, of course, we shall be able to discuss these matters more fully.

Then, Sir, in clause 5, provision has been made for compensation and costs but not for fine. Now again my friend will ask: What is compensation and what is fine? But there is a provision for compensation only and not for fine. The word 'compensation' also has been very carefully placed there, because if a probationer is not able to pay this compensation, which you may like to call fine, it would be infruc-tuous, and then the man must go to prison.

Then, Sir, in clause 6, there is a restriction on imprisonment of offenders under twenty-one years of age. There was a lot of discussion in the Select Committee as well as out"ide that this age limit should be reduced to 18. I want to mention to this august House that the age range would become very narrow if it was reduced, because in our Children Act, which I think almost all the States are having today, the age limit is 15 to 16 years, and in any case, if a young man or a woman is 21 years of age or under 21 years, the age range becomes so narrow, that it becomes difficult to send him or her here or there. In any case the Inspector General of Prisons has the right to remove any minor from the prison and send him to a Borstal or to a certified school. When that is so, we have preferred to keep it as under 21 years.

Then, Sir. clause 7 says that the report of a probation officer shall be treated as confidential. The report of the probation officer should come before the court, but the probation officer may not be available, because it is a type of training for which we require the right type of people. We must remember that the probation officers themselves have to be very normal beings. Otherwise, they cannot be able to reform anybody. Therefore they must be mentally all right, physically sound and morally correct. Of course, it is very difficult to -get such type of people, but we are going to make an effort and I do nllt see why we should not be able to get such people, because we have got such people available and we must encourage such people to come orward in more and . more numbers for this type of welfare work. Sir, in clause 7, it has been stated that the probation officer's report should be confidential. There again there was a discussion as to why the probation officer's report should be treated as confidential. But I am asking: Why should it not be treated as confidential? It should be treated as confidential unless, of course, the court decides that the offender should be told about the report whether it is for or against him. It helps the probation officer to move and go about freely with him because he observes his behaviour from 'many angles, for example, from the angles of environ r ments, character, circumstances and i employment. Therefore, Sir, the report should be treated as confidential.

Then, Sir, in clause 11 we have made a provision that wherever a sentence is given," the court must reduce it to writing, and there we have kept the right of appeal in such cases. If the magistrate or the judge or the court convicts an offender and punishes him with imprisonment, then it must be reduced to writing,.so that he gets the right of appeal. And with

regard to the duties of the probation officers, Sir. I have already mentioned the type of people we want, the type of people we have and the* type of peopie we should encourage to come forward to do this kind of specialised job. And I think it is a very progressive measure that I place before this House for discussion, which is to follow now. Sir, I move.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith, as pas:ed by the Lok Sabha, be taken into consideration."

PROF. A. R. WADIA (Nominated): Mr. Chairman, Sir, I heartily congratulate the Deputy Minister on the very able way in which the Bill has been presented. It is a very progressive piece of social legislation, and the Bill comes not a day too late.

SHRI H. N. KUNZRU (Uttar Pra-de-h): Too early.

PROF. A. R. WADIA: It does not matter so long as it come-: into force. There was a time when the idea was prevalent that criminals are born. That school of thought believed that criminals are always born but that view has been given up now and we find now that "once a criminal, always a criminal" is not a theory to be upheld. In fact we find that circumstances may drive people to crimes but it is always open for them to be reclaimed and this is particularly true in connection with juvenile delinquents. Bombay has been very rich perhaps in criminals, also in juvenile delinquents but I am bound to say that it is also rich in affording means for the reformat ion of criminals.

[MR. DEPUTY CHAIRMAN in the Chair]

We have had for a number of years, the Sassoon Reformatory School and it has been found that many of the inmates turn out to be good citizens later on in life. The Children's Aid Society has found that 20 per cent, of the people lapse into crimes later on but it means that 80 per cent, have improved and a criminal reclaimed is a citizen gained. It is on that principle that the principle of probation now , is extended. It is not desirable to commit every criminal to prison because in the prison he is likely to grow worse and therefore it is desirable that people, if possible, may not be convicted, may not be sent to prisons but may be put on probation and in that connection, probation officers have been appointed and that works very successfully in Bombay. I can certainly bear witness to that.

SHRI H. P. SAKSENA (Uttar Pradesh) : In U.P. too.

PROF. A. R. WADIA: I am glad to hear that in U.P. too it has been done with conspicuous success. I have absolutely no criticism to offer regarding this Bill. I only congratulate the Government on this progressive piece of legislation and am perfectly certain that this will help the cause of reformation of criminals.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, Sir, I would like to extend to this Bill my general support. It is on the whole a progressive measure and . . .

SHRI N. R. MALKANI ' (Nominated): U is a revolutionary measure.

SHRI P. N. SAPRU: I am not afraid of a revolutionary measure provided it leads to something great, something worth while. I think we have to approach these social questions in a liberal manner and not from the point of view *at* such lawyers or men who feel that the social fabric must be preserved at all costs irrespective of considerations of social justice. I don't say that my point of view in this matter is that of the psychiatrists, the psychologists or the sociologists but I certainly think that we should not be afraid of experimenting with penal I reform where that reform is indicated.

[Shri P. N. Sapru.]

Let me 311st glance at some of the clauses of this Bill. Let us take clause 3. That empowers the court to release certain persons after admonition. The offences for which a person can be released after admonition are of a minor character and it is not obligatory or compulsory on the part of the court to release him after due admonition. This is a power which the courts possess even today. A sentence is always a matter of discretion with the court and the court may well come to the conclusion that it is a case in which the power of admonition should be used rather than that of sentence. Before the judge can release a person after due admonition, he must satisfy himself that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient that he should use this power. Therefore, I find nothing revolutionary in clause 3 and I would like my esteemed friend Mr. Malkani to tell me what revolution in qur law this clause is going to bring about. I have tfead the relevant and the irrelevant Minutes of Dissent on this measure with some amazement. I have not principally been a criminal lawyer myself for my principal interest has been civil law but I have had some experience of criminal work as almost every lawyer has had, and I don't think that a clause of this character is going very much to increase the incidence of crime in our country. People are not deterred from committing thefts if they feel the impulse to do so, if you send them for 3 or 6 months' R.I. They would only, after they come back, become hardened criminals and I think it is on the whole wiser and in the interests of society that this power should be there and should be used with care by our courts of law.

Then I would come to clause 4 and here I find that the courts have been given power to release certain offenders on probation of good conduct. Here this is a discretion given to the courts, instead of sentencing the person found guilty to any punishment, to direct that he may be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep the peace and be of good behaviour. There is a proviso added to this clajjse that before this action is taken of releasing him on good conduct bond, the court must be satisfied that the person has a fixed place of abode etc. Here again I do not find that there is anything revolutionary about this measure. All that it does is to consolidate the law and to have a unified law of probation for the entire country and I do not find any difficulty with this clause. With this I come to sub-clause (2) which says:

> "Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case."

Mr. Deputy Chairman, I want to say one or two words about these probation officers. I think this system of probation is good and I think we ought to have these probation officers. But it is not enough for you to make provision for having probation officers. It is also necessary that the class of men you select as probation officers are competent officers and good officers. The probation officer's task is a difficult one. He must have a good training, good knowledge of modern psychology. He must be trained in modern psychological methods. He must have a good sociological background. He must be able to understand the social and economic environments of the prisoner or the offender and he must have a broad comprehensive outlook.

DR. W. S. BARLINGAY: Should not he be a socialist?

SHRI P. N". SAPRU: Well, I think that would be rather a good thing. But I am not suggesting that he must be a socialist or a communist. But he

must be a good human being. Well, the probation officer comes in after the judge or the magistrate has come to the conclusion that the man is guilty. The probation officer's duty will be to advise him as regards the suitability of applying the probation system to the offender. His duties will arise after the man has been convicted. It has been suggested here that the report of the probation officer should be of a confidential character. It is true that discretion has been given to the judge to npke the substance of the report available to the accused person if the judge thinks that it could be made available. But the general direction is that it should be treated as confidential. Frankly speaking, I have not been able to appreciate why the report of the probation officer should be treated as confidential. Maybe, in some cases it will work as a real hardship upon the accused person. I am rot convinced that we have today in our country a class of probation officers whose judgment we can implicitly trust. I am not casting any reflection on them, some of them are very good people, but I have a sort of feeling somewhere in my mind that I am not sure that we have in this country a class of probation officers on whose integrity or impartiality or ability to be fair or sense of fairness we can absolutely depend. Therefore, I am rather apprehensive about this clause, that the report shall be treated as confidential.

SHRI N. R. MALKANI: If you will read the proviso it will be clear.

SHRI P. N. SAPRU: Yes, I have read the proviso and I have just mentioned that the judge has been given' the discretion. But I know how a judge's mind works. The difficulty will be that there will be magistrates and .there will be judges who will attach more importance to the direction than to the proviso. Therefore, I do not say that I am opposed to the clause as it is', but what I say is that I am a little apprehensive about the manner in which it will work. I am not quite happy about the proposal that thesa reports should be treated as confidential.

Another question on which we have to make up our mind is whether we should treat persons up to the age of 21 as a class apart from the rest of the community, because clause 6 says:

"When any person under twenty-■ one years of .age is found guilty of having committed an offence punishable wh)h imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3."

and so on. I think, Mr. Deputy Chairman, there is a case for treating young persons in a considerate manner. There is something to be said for a lower age-limit, may be 18. I have no objection to 21 myself. But I think it is wrong to send young persons to jail unless there is a clear case for doing so, and unless it is expedient, having regard to all the circumstances of the case, to sentence them to imprisonment. What happens is when these persons who are convicted of trivial offences—this does not apply to offences which are punishable with imprisonment for life, the direction applies to comparatively minor offences—when they are sent to prison they get accustomed to the comforts of jail life. The man becomes a jailbird. He finds that it is very difficult for him to get himself rehabilitated into society. The stigma of jail is there and employers will not give him employment and people will not trust him. He will have to find comfort and solace in ways which are injurious to social well-being. Therefore, I think it is not right for courts, it is not wise for courts, to sentence

[Shri P. N. Sapru.]

people to short terms of imprisonment. I therefore, very much welcome this provision and I think it is a provision which is in harmony with modern social thought. I should require courts when they are taking action under this clause, to call for reports of the probation officers, but the judgement must be that of the court itself. I find that there is too much emphasis upon courts giving reasons for not releasing persons on probation.

MR. DEPUTY CHAIRMAN: Is that all, Mr. Sapru?

SHRI P. N. SAPRU: I cannot find the clause. I had made notes in another copy of the Bill and that copy does not happen to be with me. I will leave that point aside and concentrate my attention on the question of the setting up of the proper machinery before this measure is enforced. It is desirable that this measure should be enforced at as early a date as possible but before the Government takes that step it should see to it that the machinery is available, and it must satisfy itself that it has a proper staff of probation officers. If you are going to have probation officers, then no discretion should be left to courts and they should call for reports in all cases. There should be compulsion in the matter of reports being called for from probation officers. I do not say that the Select Committee is wrong in excluding the cases under the Prevention of Corruption Act from the purview of this Bill. We have unfortunately even in the lower rungs of our services a good deal of corruption. There is no public opinion for including cases under the Prevention of Corruption Act under this Bill.

Of course, criminologists tell us that the objectives of punishment are deterrent, retributive and reformative. I do not know whether punishment reforms criminals or not. Some criminals are capable of reform while others perhaps are not capable of reform. The psychology of crime is a complicated business but I do not know that we can or we should stress the deterrent aspect of punishment too far. I do not say that the deterrent aspect should not be kept in view. That would be going too far. The deterrent aspect should be there and should be taken into consideration in having a wise system of criminal laws but the reformative aspect should not be entirely ignored. The real' difficulty which the problem of crime creates is this. After a person comes out from a prison, he does not really know what to do with himself. There are no institutions for the after-care and rehabilitation of the prisoners in a sufficiently large degree in this country. I know that we have some Discharged Prisoners Aid Societies which are doing good work but we want to have more of such societies and therefore this probation system requires co-operation between the public and the jail authorities. Unless we rouse the sympathy of the public in this matter, the objective we have will not be accomplished.

Clause 13(1) says:

> "A pjrobation officer under this Act shall be—
>
> (a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or
>
> (b) a person provided for this purpose by a society recognised in this behalf by the State Government."

This means that an employee of a private society can be a probation officer. In any exceptional case it will be open to the court to recognise any person as a probation officer in the special circumstances of the case. It is therefore essential to provide in the rules which will be framed under this Act, specific qualifications which will be necessary for a probation officer. "We should be clear in our mind as to what the qualifications of these pro bation officers should be, and the terms and conditions of their service should be of a generous character. They will be the principal arm of our i courts in administering this

Probation of Offenders Bill, and if care is not taken in selecting a suitable type of persons for probation officers, the purposes for- which this Bill is meant will largely remain unfulfilled. Now, I note that clause 6 say's:

> "When any person under tewenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the charc-ter of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes and sentence of imprisonment on the offender, it shall record its reasons for doing so."

Therefore, it will be necessary, as indeed it is necessary even under the existing law, for courts to take into account the circumstances of .the case including the nature of the offence, the age of the offender and the character of the offender, and if the court decides that a sentence of imprisonment is necessary, it will record its reasons for doing so. Well, I think there may be a difference of opinion in regard to emphasis on this matter, but I am not disposed to quarrel with the clause as it stands because, after taking certain relevant considerations into account, it gives discretion to the courts to sentence an offender to imprisonment if they so chose.

Now, Mr. Deputy Chairman, the Minutes of Dissent raise many controversial points. Some of the distinguished writers of these Minutes, Mr. Thakur Das Bhargava and Mr. Nau-shir Bharucha, seem to think that our society will go to rack and ruin if this Bill is passed into law. That is not my approach, but there is a suggestion of Mr. Thakur Das Bhargava which has appealed to me and I would like to make a specific reference to it. That suggestion is to be found in the concluding part of his Minute:

> "An alternative system previously suggested by the reformists was that the offender after he has been pronounced guilty by the courts was to be made over to a board consisting of psychologists, psychiatrists and other experienced persons who would after considering the circumstances, antecedents, age, inclinations and proclivities of the offender suggest and prescribe the remedy for refprm of the offender and send him to any reformatory, . school, asylum, factory or industrial home for improving his character and rounding his angularities if any."

Now, if this were a practicable system, I should certainly say it would be an ideal system. But it just is not practicable, and I am not sure that the system of psychology is sufficiently advanced to achieve what Mr. Thakur Das Bhargava has in mind. We have therefore in devising our system for dealing with criminals to keep two objectives in view. We have to keep in mind the objective of deterring them from committing crimes. We have also to keep in view, to the extent that it is possible for us, the reforming of offenders. It may not be possible to reform offenders in all cases, but we should not make it impossible for a man to retrieve his error. We should make it possible for him, even after he has committed an offence, to re-establish himself in society and therefore, speaking for myself, I am not in love with those who would like people to be sent to jail for petty offences; I think that is the surest' way of increasing crime, making people unrepentant of what they have done, making them complete misfits in society. The crime i's in some part due to the socio-economic maladjustments. The individual who commits crime is the individual who cannot adjust himself to his social surrounding. Our effort should be to aim at such an improvement in our social conditions as would make crime unattractive for people, and if

[Shri P. N. Sapru.] we do that, then we will have devised some system for dealing with social miscreants and that system will be the best social defence against crime. This Bill represents an effort in devising a system of probations which will do justice both to the offender and to the community. I give it my full support. Thank you.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half-past two of the clock, MR. DEPUTY-CHAIRMAN in the Chair.

श्री अब्दुर रज्जाक खान (पश्चिमी बंगाल) : जनाब डिप्टी चेयरमैन साहब, मैं इस बिल की पूरी ताईद करता हूं । इस बिल के बारे में बहुत कुछ कहा गया है और बहुत वजाहत के साथ भी कहा गया है और मेरा ख्याल है कि इस बिल के बारे में किसी को इख्तिलाफ नहीं है और न होना चाहिये । यह तो एक इसलाही बिल है और मेरा ख्याल है कि जमाने के लिहाज से, वक्त के लिहाज से, और मुल्क के लिहाज से यह बिल इस वक्त बहुत अहम है । जहां तक इस बिल का ताल्लुक है इस के बारे में मुझे आनरेबिल पंडित पंत का एक मकूला याद आता है । उन्हों ने इस सिलसिले में कहा है कि हिन्दुस्तान की सब से बड़ी पूंजी या सब से बड़ा असेट जो है वह उस के आदमी हैं, उस की जनता है और उस के बाशिन्दे हैं । हिन्दुस्तान टैक्नीकल लिहाज से, साइंस के लिहाज से या किसी और लिहाज से, इस वक्त दूसरों का मुकाबिला नहीं कर सकता, लेकिन एक लिहाज से कर सकता है और हिन्दुस्तान के लिये वह एक लिहाज है—एक पूंजी है उसके आदमी, उस की बड़ी से बड़ी आबादी । अगर इस को हम सही तौर पर मुनज्जम कर लें, इस को हम संवार लें, सुधार लें तो हिन्दुस्तान बहुत जल्द तरक्की के पाय में आगे बढ़ सकता है । मेरे ख्याल में इस बिल पर गौर करने के लिये जो नजरिया, जो एप्रोच, हमें लेना है, याद रखना है, वह यही होना चाहिये । यों तो आम तौर पर आज समाज सुधार की जरूरत हर जगह, हर मुल्क में, महसूस हो रही है, लेकिन खास कर के हिन्दुस्तान के लिये आज इस बिल में जो मैजर लाया गया है वह सिर्फ एक सुधारी और इंसानी मैजर नहीं है बल्कि मेरे ख्याल में पोलिटिकल और सोशल लिहाज से भी एक जरूरी मैजर है । एक जमाना था जब कि यह कहा जाता था कि खून का बदला खून, आग बदला आग, और उस जमाने में इस नजरिये से भी दुनिया चल सकती थी, समाज चल सकता था, लेकिन आज यह नजरिया बदलना ही पड़ेगा । आज जब कि, सोशलिज्म का जमाना आ रहा है और हम सब सोशलिज्म को कबूल कर रहे हैं तब तो हमें नजरिया बदलना ही है । मुझे अफसोस है कि हम देखते हैं कि कुछ लोग ऐसे हैं जिन को कि यह नजरिया मकबूल नहीं हुआ—यों एलानिया तो वे कहते नहीं हैं लेकिन अगर आप रिपोर्ट को पढ़ेंगे तो उस से आप को पता चलेगा । उन को खदशा है कि यह जो मैजर है वह अगर लाया गया, कबूल किया गया, तो सोसाइटी को उस से नुकसान ही ज्यादा पहुंचेगा : मैं उन्हें यकीन दिलाना चाहता हूं कि जमाने की रविश का अगर लिहाज रखा जाय तो उन्हें यह खतरा नहीं होना चाहिये । यह आज की बात भी नहीं है बल्कि सन् १९२३ से हमारे मुल्क में यह इसलाही काम शुरू हुआ है और उस का नतीजा भी हमारे सामने है जिस को देख कर के यह यकीनी तौर पर कहा जा सकता है कि इस को अगर जोरदार किया जाय, इस को और बढ़ाया जाय, तो उस से फायदे के बजाय नुकसान नहीं पहुंचेगा ।

एक बात इस सिलसिले में साफ हो जानी चाहिये और वह यह कि अगर कोई कसूर करता है या जुर्म करता है तो उस का जिम्मेदार कौन है ? पहले यह समझा जाता था कि सोसाइटी नहीं बल्कि वह जाती तौर पर जिम्मेदार है लेकिन आज दुनिया में ऐसे लोग बहुत कम हैं जो कि यह कह सकते हैं कि

सोसाइटी ज़िम्मेदार नहीं है । आज जुर्म को दूसरी निगाह से देखना पड़ेगा । और इस सोसाइटी को उस के लिय जिम्मेदार ठहराना पड़ेगा । आज कोई भी जुर्म करे –आज हमारे मुल्क में जुर्म बढ़ रहे हैं – तो हम लोगों की शिकायत करते हैं, उन को सज़ा देते हैं, उन की गरदन ज़दनी करते हैं, लेकिन उस से फायदा नहीं है, उस से कोई नतीजा निकलने को नहीं है । आज तो यह ख्याल किया जाना चाहिये कि सोसाइटी उस की ज़िम्मेदार है और ये लोग सोसाइटी के रोग हैं । यह बीमारी है और इस बीमारी का इलाज हमें ढूंढ़ना है, इस को सुधारना है , इस को अच्छा करना है । तो यह नज़रिया, यह ख्याल हमें लाना है । यह एक बड़ी बात है जो कि इस बिल के सिलसिले में हमें हर शख्स को, अगर इस की कामयाबी चाहते हैं तो, याद रखनी है । वह इलाज का मुस्तहक है, वह तो बीमार हो गया है, वह अपने बस में नहीं रहा है । तो क्या करना चाहिये ? तो हमें कोई बात ऐसी करनी है, कोई ऐसा इलाज निकालना है जिस से कि सोसाइटी से यह रोग भी निकल जाय और वह भी अच्छा हो जाय । क्या यह हो सकता है ? क्या किसी को बदला जा सकता है ? मेरे ख्याल में आज ऐसे लोग बहुत कम होंगे जो कह सकते हैं कि आदमी सरकमस्टांसेज से नहीं बन सकता, नहीं बदल सकता । हालात अगर बदल दिये जायें, सरकमस्टांसेज बदल दिये जायें, उस की ज़हनियत में तबदीली ला दी जाय, तो उस में जरूर सुधार आ सकता है, लाया जा सकता है । इस बिल के तमाम मैज़र्स खास तौर पर इसी मकसद से, इसी लिहाज से, रखे गये हैं ।

ज्यादा कहने की जरूरत नहीं, लेकिन एक खास बात जो इस सिलसिले में है वह यह है कि इन तमाम कार्यवाहियों को चलाने के लिये प्राबेशन आफिसर या मुस्लहे की जरूरत है जो इस्लाह ला सके । सिर्फ प्राबेशन दे कर किसी आदमी को रिहा कर देना काफी नहीं है । कोई भी जुर्म हों, वह खास हालात में सरज़द होते हैं, और उन खास हालात को देखिये । जिस तरह एक डाक्टर एक मरीज़ को देख कर उस का इलाज करता है उसी तरह प्राबेशन आफिसर को भी हालात को देखना चाहिये, तभी फायदा निकल सकता है । प्राबेशन आफिसर का होना इस मैज़र को कामयाब बनाने के लिये लाजमी है । यहां हमें इस बारे में इख्तलाफ़ नहीं, बल्कि एक राय में हमारी जो फर्क पड़ रहा है वह यह है कि प्राबेशन आफिसर की राय हर जगह जरूरी नहीं समझी गयी, उस की रिपोर्ट की हर जगह जरूरत नहीं मानी गई है, जैसे कि मैं आप को बताऊंगा कि क्लाज ४ और क्लाज ६ से सब क्लाज २ में कहा गया है कि उस आफिसर की रिपोर्ट हो या चाहे न हो । यानी कि प्रोबेशन आफिसर की रिपोर्ट होना कोई जरूरी नहीं बताया गया है । तो यह हमारे ख्याल में बिल के मकसद को खाम करता है, इस से कोई फायदा नहीं पहुंचेगा । अगर प्राबेशन करना है और इस मेज़र को चलाना है तो प्रोबेशन आफिसर की राय हमेशा लेनी पड़ेगी और उस को लेना जरूरी है, यह हमारा ख्याल है । चुनांचे, मकसद के लिहाज से, बिल में जो मैज़र लाया गया है उस के लिहाज से, हर लिहाज से, सिर्फ एक्जिक्यूटिव आफिसर पर ही नहीं छोड़ देना चाहिये बल्कि प्राबेशन आफिसर की रिपोर्ट पर भी हमेशा गौर करना चाहिये । प्राबेशन आफिसर की रिपोर्ट हो या न हो, लेकिन कोर्ट हुक्म सुना दे, यह चीज़ काम नहीं देने की । इसलिये अगर हम कानून में थोड़ा भी अंधेरापन रखेंगे तो हर काम में शिकायत पैदा होगी और काम आगे नहीं बढ़ पायेगा । इस सिलसिले में ज्यादा लम्बी-चौड़ी बातें न करते हुए मैं सिर्फ इतना अर्ज करूंगा कि जोर इसी पर देना होगा कि प्राबेशन आफिसर की रिपोर्ट के आगे जो "इफ एनी" के लफ्ज रख दिये हैं वह नहीं रहने चाहियें और उस रिपार्ट को लाज़िम कर दिया जाय । इतना इसरार हम गवर्नमेंट से करते हैं और उन से उम्मीद रखते हैं वे इसे कबूल कर लेंगे ताकि काम बखूबी अंजाम दिया जा सके और बेहतर से बैहतर हो ।

[श्री अब्दुर रज्जाक खान]

एक बात और इस में पैदा हो रही है कि रिपोर्ट कान्फिडेंशल हो कि न हो, प्राबेशन आफिसर की रिपोर्ट हो तो उसे आफिशल करार दिया जाय या नहीं। तो हम ने जहां तक गौर किया है उससे हम समझते हैं कि रिपोर्ट को कांफिडेंशल रखना कोई जरूरी नहीं है। कांफिडेंशल क्यों रखा जाय ? वहां हम कोई सजा तो नहीं दे रहे हैं उन को गो, वे मुस्तहक हों सजा के, लेकिन प्राबेशन आफिसर की रिपोर्ट के मुताबिक जब हम उन को सजा नहीं दे रहे हैं तब उस को हम कांफिडेंशल क्यों रखें ? इस की कोई वजह हमारी समझ में नहीं आती ।

दूसरी बात जो इस सिलसिले में आई है वह यह है कि कोई यकसां हर स्टेट में कानून जारी हो या न हो ? तो हर जगह तो यकसां हालत नहीं है। किसी खास जगह यह अच्छी तरह चल रहा है, किसी किसी स्टेट में अभी तक इस का नाम व जिक्र भी नहीं आया। तो हर जगह, एक ही वक्त, एक ही दिन और एक ही तरह से इस को नाफिज कर दिया जाय हर स्टेट में, इस चीज को हम असली सूरत के लिहाज से मुफीद और कारामद नहीं समझते। इस का हम कर नहीं सकेंगे, यह चल नहीं सकेगा। मुश्किल यह है कि हम यह देख रहे हैं कि जहां तक स्टेट वालों से सेन्टर का ताल्लुक है यह हो नहीं रहा है कि सेन्टर हर जगह इस को यकसां चलायें। तो इस बिल में इस चीज को ला देना हम जरूरी नहीं समझते और इस का नतीजा भी अच्छा नहीं होगा। इसलिये जरूरी यह है कि सेन्टर से ऐसे इसलाहात के बारे में स्टेट गर्न्नमेंटों को गौर दिलाया जाय, उन को समझाया जाय, कि जल्द से जल्द वे इस में आगे बढ़ें और अपनी हालात के लिहाज से इस को काम में लाने की कोशिश करें। यहां सब से बड़ी बात तो यह है कि जो प्राबेशन आफिसर्स हम मुकर्रर करना चाहते हैं वे हर लिहाज से मुफीद हों, तजुर्बेकार हों, साइकलाजिस्टस हों, जो कि उस काम को अच्छी तरह से अंजाम दे सकें। ऐसे आदमी हमें कम मिलेंगे लेकिन उन को हमें तैयार करना होगा, इस की तरफ सेन्ट्रल गवर्नमेंट का ध्यान जाना चाहिये। ऐसे आफिसर्स उस को तैयार करने चाहियें जो अपने काम को अच्छी तरह अंजाम दे सकें। सिर्फ एक्जीक्यूटिव आफिसर के हाथ में सब कुछ छोड़ देने से काम नहीं बनेगा। अगर जिस को चाहें प्रोबेशन दे दें, यह मामले की नौईयत रही तो मेरे ख्याल में बिल का मकसद खाम हो जायेगा और हम आगे नहीं बढ़ सकेंगे। इतना कह कर मैं खत्म करता हूं।

SHRI T. S. A. CHETTIAR <Madras): Mr. Deputy Chairman, coming from a State which perhaps introduced this probation first in India, as far back as 1926, I should generally welcome this Bill. Probation has worked fairly satisfactorily in the State from which I come and I should think there is a case for its general extension in the manner sought by the Bill. Coming to a few clauses, I would draw your attention to clause 6. The provision in clause 6, as you are aware, makes a difference as compared with clauses 3 and 4. In clauses 3 and 4 it is a court that should make out a case that he may be left on probation. Coming to clause 6(1), if I may read it, it says:

> "When any person under tewenty-one years *qt* age is found guilty of having committed an offence punish able with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied ..."

That is, normally no court shall sentence anyone who is below twenty-one years of age to imprisonment, unless it makes out a case for such a sentence. This is at variance with clauses 3 and 4 where that sort of onus is not laid on the court. I would like this House to consider this provision, an omnibus provision. No doubt, the court can find that a particular person who is below 21 can be

sentenced to imprisonment. But, normally, if I can read further, Mr. ; Deputy Chairman, you will see—

> "... if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so."

Even though under the Indian Penal Code there is provision for imprison-: ment, that provision shall be null and void under this section—not absolutely null and void, but if the judge finds any reason for saying that the accused can be sentenced to imprisonment, he may do so by giving the reason in writing. Under clause 11 a court of appeal may, *suo motu,* on appeal consider whether the reasons given by the court under clause 6, sub-clause (1), are valid. I would think, Mr. Deputy Chairman, that this part of the Bill should be earnestly considered.

Recently, I have been disturbed— and I am sure this House has been disturbed—by a class of cases which have appeared in almost all the States in India. Just a few days back when I was returning, I had to go to a meeting at Santiniketan. The day I arrived a^t Calcutta was an examination day and the newspapers told a particularly miserable story. The students found a particular examination paper to be very difficult. Some of them got out of the examination room, broke open some of the school buildings, dragged out the examinees and gave them a good drubbing. The newspapers gave a 7-column headline. Recently, Mr. Deputy Chairman, in the Annamalai University with which I am sure, you may be familiar and with which other Members in this House may not be familiar, simply because certain people who went to a girls' hostel function were not allowed entrance after a particular time according to rules, not only were the houses broken, but many other things also happened.

SHRI D. A. MIRZA (Madras): The Minister was not allowed to go out.

SHRI T. S. A. CHETTIAR: The Minister was not only not allowed to go out, but also he was stoned. The same thing happened to the Vice-Chancellor last year. This is not confined only to Madras and Calcutta. We know what happened at the Patna University. By no means are these occurrences confined to any particular State or any particular university. But this we must take into account that the students think that they can take the law into their own hands and afterwards, they bring forward the plea that, "After all, we are students; we must be considered sympathetically." And not only our students are minded that way. We the elders, go to the people with the plea, "Please leave it. This is a small thing. After all, they are students." I think this "after all, they are students; after all, they are young men; after all they are adolescents" is being taken too far. With a clause like this incorporated at this stage in both Houses of Parliament, what sort of effect it will have upon not only the student population, but also the adolescent population, because under this clause, even a judge will be heard put to come to a conclusion and no,imprisonment will be awarded to them. I am sure, if the spirit of this directipn is to be followed, in 99 per cent, of the cases in which people, men or women, are below 21, all will have to be let out because, knowing well as I do and as you do, Mr. Deputy Chairman, the administrative officers are only too happy to take advantage of the provisions, for no administrative officer wants to take greater responsibility than he need take under any circumstances. And if it so happens that the administrative officer takes the res-ponsibility and that case goes to an appellate court and if it is determined that he should not have exercised his responsibility that way, that will be the end of the discretion given.

So, Sir, I think we were not very well advised to give this blank permission under sub-clause (1) of clause 6. I am one of those people who believe that there are various reasons for the indiscipline that is found in

[Shri T. S. A. Chettiar.] the various universities and colleges— maybe frustration, maybe too much number, maybe bad quality of teachers, maybe many other things like non-provision of good facilities. This has to be tackled on the positive side, rather than on the negative. Positive steps should be taken to fulfil the needs, the ambitions and the good wishes of the students, at the same time putting forward greater ideals before them. But, all the same, to have a provision like this in which normally nobody below 21 will be, sentenced to imprisonment whatever his offence, I should think, Sir, we go too far. There is something like progress in social thought. But social thought is for the existing society. Social thought does not exist as something separate from the existing surroundings and it can progress only as applied to our existing circumstances. To me it seems that a provision like this will not go very far to improve discipline in our schools and colleges or even to infuse confidence and good conduct in people who are below 21.

SHRI P. N. SAPRU: It gives a discretion.

SHRI T. S: A. CHETTIAR: It gives a" discretion. You were not here, I suppose, when I gave the other point ef view.

Now, I would like to come to another clause of this Bill—clause 12. It speaks of the removal of disqualification attached to the conviction. It says:

> "Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attached to a conviction of an offence under such law:
>
> Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence."

Let me explain it. There are certain disqualifications in elections. If somebody is convicted of an offence which involves moral turpitude, he shall not be allowed to stand for election for five years. People who are found guilty—and validly found guilty—and are later on let on probation, they, I agree may be given a chance to reshape their lives. Most surely, people are liable to err. I also appreciate that in the existing circumstances, most of the people who come out of the jails and the Borstal schools come back as hardened criminals. It is also true. Most of us are aware of the moving and beautiful story of Les Miserables by Victor Hugo. A good boy who was hungry stole a loaf of bread; he was sent to jail for 18 years and when he came back, he came as a human crook. It happens in many cases to many other people. So, it is necessary that we must bring in reforms, we must humanise our jails; we must humanise the Borstal schools and establish 'activity schools' in which people may find self-expression so that these adolescents may lead a better and a more normal life, so that they can eke out a living; so that they can lead a respectable life after they leave such schools. All this is true. But to say that notwithstanding anything contained in any other law they should not have any disqualification like the one which I referred to, seems to me that it goes a little too far and I would rather support the amendment which has been tabled by a friend, notice of which has been given to delete this.

Sir, there are not many other points for me to mention. There is only one thing which I would like to refer to and it is this. In reply to a question that was put in the course of the discussion on this Bill as to the reason why in sub-clause (3) of clause 1 it has been said that different dates may be appointed for the different parts of the State. I feel, it is necessary

because all the States are not of the same calibre and do not have the same kind of administration. You know, Sir, what sort of States we had— States, Parts A, B and C. Today though constitutionally all are the same, there has been little development in some States and so, this type of provision may be necessary.

I do not like to say much further than this. Mr. Deputy Chairman, while I warmly support the principle underlying this Bill, while I warmly support the extension of this principle of probation, I view with some disfavour and fear clauses 12 and 6.

Thank you, Sir.

DR. R. P. DUBE (Madhya Pradesh): Mr. Deputy Chairman, Sir, this is a very progressive Bill that has been brought and I would say that it should have been brought earlier. But better late than never. I have got to talk on only one clause and this is clause 7 which says that the report of a pro-
„ bation officer shall be confi-
dential. I personally think that this should be deleted, that is to say, it should not be confidential. By all means, Sir, the public may not know it, but the man against whom the confidential report has been written should be informed, because the probation officer might be prejudiced against some particular action of the offender or the ward, and he may, therefore, give a report which may not be very good or which may be prejudicial against his behaviour. I think this report should not be treated as confidential and he should be informed about it. That is all that I want to say, and I hope the hon. Minister will consider this point.

Thank you, Sir.

DR. A. N. BOSE (West Bengal): Mr. Deputy Chairman, Sir, I appreciate the spirit in which this Bill has been drafted and brought before this House. Many of us, who have been in prison during the days of our struggle for independence, have seen with our own eyes how prison life hardens offenders into habitual criminals. It is the end of criminal law not to retaliate against the offender for his crime, but to offer every possible opportunity to him to reform himself and to rehabilitate himself as a useful citizen of the country. The law is there to prevent cirme in this sense, not by retaliation, but by reforming the offender. Sir, it has been rightly observed, particularly in the Minute of Dissent No. 3, that crime is a sort of social disease, that every criminal should be treated as a pathological case, and that it is the duty of the society and of the Government to provide the necessary social environment in which the criminal may find opportunities to rehabilitate himself.

Sir, so far, the Bill is a step in the right direction. It provides some opportunities to an offender to reform himself. But I must say, Sir, that this Bill does not go far enough. This Bill by itself is not enough to reclaim our citizens, to reclaim the offenders as useful citizens. While the purpose of law should be to reform the offen der, it should also be the purpose of law to provide adequate safety to innocent citizens. Sir, on a perusal of clause 3 and the sections mentioned therein, I find that it is particularly the cases of petty thefts and cheating which are brought under considera tions of leniency. Section 420, I sup pose,—I think the lawyers in the House will correct me if I am wrong— is on cheating and the rest of the sec tions are on petty cases of theft. The Bill provides that those who are first offenders under these sections may be released at the discretion of the court. Sir, one of the hon. Members who spoke before me cited the case of students indulging in riotous activi ties, indulging in terrorising teachers, invigilators, etc. I think, Sir, these cases will come under clause 3. Then there are other juvenile offenders— youngsters—who have become habituated to anti-social activities

[Dr. A. N. Bose.] and who are found almost in every "city of our country. Then there are domestic servants about whom we have frequent reports that they manhandle their masters or commit burglary or robbery in the houses of their masters. Sir, most of these offenders will get the benefit of clause 3 of the Bill. Sir, I do not object that these people should be given the benefit of clause 3 and that they may be released and given a chance to correct themselves. But, Sir, I am afraid that the very purpose of the Bill will be defeated if we re~st content with passing this Bill alone. If we do not want that domestic servant who betrays the trust of his master, commits burglary or robbery in the house of his njaster, or inflicts grave injury to the inmates of the house, we should also provide for suitable conditions being introduced in domestic service, so that these menials of the house should not be treated as mere cogs in the wheel, but should be meted out certain measure of humane treatment. They should be provided with certain conditions of service which prevail in > other spheres of employment. About students also, Sir, I am afraid that conditions will grow worse if we treat them with leniency—students who are guilty not only of grave indiscipline but guilty also of the sections which have been cited here or of any other offence which is punishable with imprisonment for not more than two years—unless we go ahead with rapid reforms in our educational system. I can understand, Sir, that these things cannot be brought within the scope of this Bill. But I shall caution the Government that they must not rest on their oars, and they must go ahead with other progressive legislation to make the purpose of this Bill effective.

Then, Sir, I also have some grave misgivings about the probation officers, their duties and functions and the manner of their appointment. The whole system depends for its working on the straightforwardness, integrity and courage of the probation officers, and I share the apprehension of the hon. Member who spoke from the Communist benches whether we shall be able to find such persons who can take the responsibility of discharging their job efficiently. Their jobs is not merely responsible, but it is also a highly dangerous job. Lt has been stated here that he has to enquire, in accordance with the directions of the court, into the circumstances or surroundings of any person accused of an offence, with a view to assisting the court in determining a most suitable method of dealing with him. The whole fate and future of the offender will depend upon the report submitted by the probation officer. I am afraid a man who is below the standard might be bribed, coaxed or cajoled. There are powerful interests behind an offence and particularly the type of offences which are within the scope of this Bill and I am also afraid that there is every possibility of these probation officers being utilized for political purposes by the State Governments. It is the State Government who is to appoint the probation officers either from among officials or non-officials. There is the danger that the State Government may appoint such persons who may be utilised for political purposes, for election purposes or for other purposes. So, all that I want is to warn the hon. Deputy Minister who has brought forward this Bill to keep these things in view and to see that the Government does not rest on its oars and goes ahead with other progressive legislation which may be necessary to make the provisions of this Bill effective.

In the end, I also ventilate my misgivings about sub-clause 2 of clause 1. Why is an exception made for the State of Jammu and Kashmir? I don't know whether Jammu and Kashmir are ruled out by the provisions of the Instrument of Accession. Whatever it may be, since the implementation of this Act depends upon the State Government itself, since the State Government itself may choose the date on which to introduce the Bill, I don't

find any reason why a special case should be made of the State of Jammu and Kashmir. I hope the hon. Deputy Minister will explain this point.

SHRIMATI YASHODA REDDY (Andhra Pradesh): Sir, I rise to sup port this Bill and I whole-heartedly welcome it because the principle involved is a very important one. The principle involved in this legislation is a change-over to the reformative aspect from the deterrent. In this changing world, when we want to progress, I think this is most needed in the present day but if we look to the conditions of India and the society we have, I feel that it will be a very difficult task to have this legislation put into effect very successfully. Ours is a country with a society which is not very settled and big changes are taking place socially, economically and in all spheres of life. The, standard of living is low, education is very low and though this sort of legislation is of the greatest need in a country like ours, yet, I feel it is in this country that the implementation of these reformative aspects will be very difficult. So, I feel that we have to go a bit slowly and step by step.

Now, coming to the^ clause by clause consideration, I will deal with clause 3. The three fundamental principles involved in this Bill are, first, you release offenders after due admonition; secondly, you release some offenders on probation of good conduct; and the third, certain offen ders under 21 years of age are com-pulsorily released unless there are good reasons for acting other wise. The fix-st aspect of it is dealt with by clause 3 which says that offenders shall be released after due admonition. Personally I feel that this is not necessary here. We have got in the Criminal Procedure Code section 562 which gives this power of admonition ' and release by the court. There discretion is given to the court to look into the various circumstances of the case and see whether to give admonition or not. When there is such a clause in the Criminal Procedure Code, I don't feel why we should introduce such a clause here especially when probation has got nothing to do with admonition.

Secondly, this Probation of Offenders Bill is a Bill by which we want to reform the character of the person. So, it involves the offences in which there is *mensrea* involved. So, I feel that we should apply it only to offences under the Indian Penal Code and not to the other enactments where rules and regulations of technical or administrative character are concerned. For instance, we have the Motor Vehicles Act or Food Control Act. Those things should not come under the effect of this probation of Offenders Bill. These are of an administrative character and when people commit offences, you should punish them. Tt has nothing to do with reformation or with character. Only when offences under the Penal Code are concerned, where _you have to train the mind, where you have to reform a person, we need it. So, I humbly jrequest the Minister to see whether it should necessarily be extended to other fields also and this is unsually limiting the legislation of the States. Where the States cannot pass any laws—the I.P.C. is different—but where certain technical offences or breaches of certain rules and regulations are concerned, I don't think you should apply this. Moreover some say that we are applying it only for first offences but 'first offence' is a vague term. Supposing a person commits a crime under the penal laws, as a first offence you release him, if some time later, for not paying the motor tax or cycle tax, he is convicted, then for a petty offence he is convicted because he had been a first offender already. Take it the other way round. Sup-posing he has been convicted for such an offence as, not paying a tax, when he commits an offence of a penal kind, he is not given a chance to reform because he has been a previous offender. Because of the very fact that we want to reform a person or because

[Shrimati Yashoda Reddy.] we want to set right the character of a person in the social dealings, I don't think by stretching it to all the other enactments it will do much good. So, personally I feel three objections to clause 3. Firstly, it is not necessary. Even if it is necessary, it should be left to the I.P.C. offences, and thirdly, it should be limited at least to people under 21 years of age. Everybody knows that the age of reformation, the age of forming character or the most impressionable age is the young age. It is not the person of over 40 or 50 or 60 years after he knows everything. After that age you cannot reform him. You are not going to reform him. It is the children, the juveniles and the youngsters between the ages of 21 and 25 or you may have even 30. What is the point of trying to reform a person who is far beyond the age of reformation? If you want to have such a comprehensive legislation, have it for only certain offences under the Indian Penal Code and have it below certain ages like 25 or so but let it not be applicable to all ages.

Coming to clause 4, it deals with release of offenders on probation of good conduct. This applies to all offences excepting offences coming for punishment of death and transportation but I feel this must be, as under clause 3, made applicable to offences which are punishable with imprisonment for not more than two years. This is necessary because, though personally I feel it should be lenient as this, in the present stage when the society needs reformation, when there are so many crimes committed for lack of education, lack of employment etc. and the society has not developed socially and economically it will be a hard task. People do commit crimes not because they want to but there are pathological conditions, social conditions. It is all inter-linked. Unless you reform the society, you cannot reform. Unless you have some law to stop them from doing it, the society will not reform. I know it is a very hard task but yet I feel that especially in a country like India where we want section 144 to provide law and order, we cannot allow every person however grievous the offence may be, or however great the offence may be, to be let off. I personally feel that it should also be restricted to offences which are punishable with 2 or 3 years.

I have nothing to comment on clause 5. Clause 6 is welcome. It is restricted to persons under 21 years of age. There is a slight difference between clause 4 and clause 6. Whereas in clause 4 discretion is left to the court, here it is made compulsory. Then I come to clause 11. To sub-clause (1) I have no objection. But sub-clause (2) says:

> "Notwithstanding anything contained in the Code, where an order under section 3 or section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court."

I think this appeal should not be there. You are giving a concession to the offender. You are giving a concession to a wrong-doer. You are giving him a concession. All right. He has committed an offence. But the court feels that it is his first offence, or that there are these extenuating circumstances and so the court releases him. Then what is the fun of thus releasing the man on probation and then allowing the complainant to go on appeal saying, "This order of the magistrate should not have been there. I want an appeal." If you allow such an appeal, it will be a negation of what you have given to the offender. You really want him to reform and so you give him the concession and you don't put him in jail. But here you

tell the complainant: "You have failed in one court; but you can go to the next court on appeal." Of course, if there is a genuine case for appeal or if the State wants it, you may have it, but restrict it only to the State. The magistrate has gone through the case and feels that there are extenuating circumstances and so the man is given a chance to reform and makes him a probationer. And then if you allow an appeal, what you give by one hand you are trying to tak« away by the other. So, this provision to go on appeal should be given only to the State and not to any private complainant.

Now, one word about this protection to actions done in good faith. It is stated that on whatever action the probation officer has done in good faith, no proceedings should be taken. I personally feel that you are here giving a long rope to the probation officers. You are making them bosses. Especially, the future of the person entirely depends on what the proba tion officer reports. You are making it possible for the offender *or* may be persons interested in him, to try to bribe or corrupt the probation officer so that he may write a good or a bad—what shall I say, judgment? *No*—report about the offender. Of course, in most of the Bills, I know, you have this protection for acts done in good faith. But here if you give this absolute protection to these officers, the missionary spirit and good faith that they may have will be removed, once they know that they are absolutely safe, human nature being what it is. Of course, exceptional officers there may be, to whom money may not matter. But I feel when such absolute protection is given to the probation officers, it may cause hardship. I am not asking the hon. Minister to remove this provision, but I am only saying it as a word"of caution, for it may lead to some corruption. It may also lead to great hardship. This is as far as the clauses are concerned.

Then there are one or two lacunae which I would like to point out. I feel in this measure, there has not been any provision made as to when the age of the offender should be considered. Is it when the person commits the offence or when the magistrate is passing judgment? In my opinion, I think that the age of the offender should be calculated at the time the offence is committed, not when the magistrate is passing the sentence. It may be in the mind of the hon. Minister also; but just as in section 11 of the Madras Borstels Act or section 37 of the Madras Children's Act, you should specifically- lay it down that the age of the offender should be calculated at the time the offence is committed.

Secondly, I would like to know when the report of the probation officer should be taken by the Magistrate., This is a little important. In my view it is very important. I had a chat with one or two hon. Members of very high legal knowledge and they seemed to agree with me also. But I do not know whether. I will be able to convince the House. Here in clauses 3 and 4, the magistrate tries the offender. And then he may write that due to such and such circumstances, or due to this being the first offence, or due to these extenuating circumstances. I am not sending him to jail, I am not giving a sentence of imprisonment. I will leave him on probation. Well and good. I have no objection to that. But later, when the bond is breached or when the man does not behave, another magistrate under clause 9, after the breach of this bond, goes into the original offence and then calls for the report of the probation officer and sees what the offender's behaviour had been and then comes to write a judgement and convicts him. Sir, I feel when the magistrate first tries the offender, he should not only write the judgement releasing him on probation, he must write down: "I find this man guilty, and in ordinary circumstances I woud give him such and

[Shrimati Yashoda Reddy,] such sentence of jail imprisonment or such and such penalty." He must | specifically write it. Why, I will explain in two minutes. H? I must specifically write: "Having gone through the whole case, I feel, under ordinary circumstances, this man should be given this sentence. But this being his first offence or because of so many extenuating circumstances, I give him here a chance. Let him be released on probation." Later, when this man fails to discharge his duty, the magistrate or the judge, when he tries him after he has breached the rule, can automatically convict him of the other offence proved at first, because according to the Evidence Act, no evidence of character is lacking. Mainly all the reports of the probation officer are nothing but evidence of character, whether it be of good character or of bad character, most probably it is of bad character. This is going to prejudice the man, prejudice the magistrate who is going to try him after he has breached the surety bond and he may pass a harsher or a lesser judgment. You see, there is a prejudiced mind. So when the first magistrate deals with the culprit, if he exercises a judicious mind, a mind unprejudiced by the reports of the probation officer and gives his judgment and then later leaves him on probation, that, I feel, will be doing a great good. If the hon. Minister thinks about it, I think she will also feel that there is some meaning in what I have said. This is all I have to say as far as the particular clauses are concerned.

Generally I would say that when we are appointing probation officers, the whole success of the thing depends on what sort of probation officers we arc going to have. So, care must be taken to appoint people of integrity, persons with missionary spirit. And they should also be given good pay. You see, it is no use giving them a pittance and saying, "You are doing a sort of social work, so do it." Nobody is going to do social work like that, knowing human nature for what it is . So, you must give them reasonably good pay so that they may not be attracted by the bribes or other offers of money.

"AN HON. MEMBER: And with previous training also.

SHRIMATI YASHODA REDDY: Yes with previous training. Previous training must be there.

Secondly, if these offenders are let out on probation, there should be some sort of humanitarian society to train up these offenders, to let them know of their offence. Most probably they would not have committed the offence wantonly. Circumstances might have led them to do it. How to reform them? How to educate them like those in Borstel and other reformatory schools? You must have humanitarian societies where these probation officers can go and pay visits and also train those who are on probation.

Lastly, I would submit that this is going to be an all-India Act. But in the Financial Memorandum, it ig said that the States have to look after all the finances. When they want to appoint probation officers or open reformatory schools, only the State has to do it. The Centre is not going to give them anything. I think this is not of much use, because most of the States are in want of money. If you leave it to the discretion of the State and say: "Whenever you have the money for it, do it", I don't think full justice will be done to such a good measure. If there is a genuine request from the State and if the Centre considers it necessary, it should be given once in a way. I mean, it should not be a hard and fast rule. It should be a little more elastic and if any State comes forward for money and makes the request, saying, we are having such and such things and for want of money we are not having enough probation officers or reformatory schools and so on, then the Centre should in its wisdom sometimes grant the State some money.

Thank you, Sir, for the indulgence »hown to me.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, I rise to support this Bill whole heartedly and while I will not repeat the many excellent points that have been made in support of the Bill by the hon. Minister, I would draw her attention to certain aspects of the Bill which have struck me. Sir, I believe it was the hon. Mr. P. N. Sapru who said that this Bill was not of a very revolutionary nature after all and the reason that he gave was that so far as clause 3 of the Bill was concerned, it merely re-enacted so to speak the provisions of section 562 of the Criminal Procedure Code. Now, if we merely compare the provisions of clause 3 of the Bill with section 562 of the Criminal Procedure Code, perhaps Shri Sapru would turn out to be right. But then the Bill is of a revolutionary character not because of this clause 3 but, if I may so submit, on account of several other provisions which find place in the Bill. Take for instance, clauses 4, 5 and 6 and, even more than that, clauses 13 and 14, namely, appointment of these probation officers. I feel that these are in truth very very revolutionary provisions.

SHRI P. N. SAPRU: There are similar provisions in other States, U.P. for example.

DR. W. S. BARLINGAY: In very few only but I feel, Sir, with all respect to the hon. Shri P. N. Sapru for whom I have got very great respect, that the revolution consists in the attitude that we shall hereafter take or have with regard to the offenders. This Bill is a recognition of the fact that when a person commits an offence, it is not wholly due to his internal wickedness, inherent wickedness in . the person himself but that it is due ' more to social conditions. I feel, Sir, that, in, as we say, the socialistic pattern of society, there will be much less crime than in what you call a capitalistic state of society and this Bill is a recognition of this fact that crime increases or decreases not because of the inherent wickedness of a man, not that as the wickedness increases the crime also increases, as the wickedness decreases crime also decreases—that is not a fact, that is not the law at all that lies behind all these crimes—but that it is the condition of society which determines all these matters. So, the revolutionary content of the Bill consists in this that hereafter we shall look upon the offender from a particular point of view, not so much as a criminal but that we would rather direct our attention to the conditions which have made him a criminal. Up to now, punishment has merely been retributive. We merely thought of atonement of a sin but hereafter we will begin to think of reform.

SHRI P. N. SAPRU: That has been the objective so far also deterrent, retributive and reformation. All these are there.

DR. W. S. BARLINGAY: I certainly do not dispute the proposition that the hon. Mr. Sapru is concerned to put forward; but what I was pointing oui was that much depended upon the attitude that we took towards an offender. Till now, and especially in the last century, even at the time of one of the greatest philosophers, *viz.* Kant, we thought of crime as a sort of sin and the punishment was more of a retributive nature, in the nature of an atonement but now, hereafter, we will have other ideas. We may convict a person for the offence that he commits. That is true enough but we will, while doing so, take into consideration the fact that although he has committed the offence he has committed the offence and therefore he has got to be punished, that is true—the crime has been committed not so much because of his internal wickedness but because of social conditions and the revolution consists really in this, p and because it is due to social conditions, the emphasis will be on the changing of social conditions rather on

[Dr. W. S. Barlingay.] the punishment of the individual concerned. Here is the revolution which is sought to be brought about by the Bill.

There are other aspects also of the Bill to which I will refer. One point that strikes me is that the previsions of this Bill do not apply to pending cases. There are hundreds of cases pending today. Where is the provision in this Bill that these provisions will apply to all these cases? Presumably, these provisions will apply to those cases only where the offence has not yet come up before the magistrate, has not been taken cognizance of by the magistrate. I speak subject to correction but I feel that the Bill, as it stands at present does not apply to pending cases at all. Sir, you know very well that if it is the intention of the Legislature that the previsions should be made applicable to pending cases then there ought to be a specific provision to that effect. Otherwise, these provisions will not aDply to pending cases at all. I feel, Sir, that there is no reason on earth why the provisions of this Bill should not be made applicable even so far as a pending case is concerned, even where an appeal is pending before the High Court or the Supreme Court. I think there should be a very specific provision with regard to this.

There is another point which I should like to make. It seems to me, Sir, that if we emphasize this aspect of crime, namely that it is due to social conditions that crimes take place in society, if we take this view, then we will have to accept the further conclusion that so far as these various provisions are concerned, namely clauses 13 and 14 with regard to the appointment of Probation officers and so on, that these or some similar provisions ought to be made with regard to the convicts also who are undergoing jail sentences. As a matter of fact, clauses 13 and 14 and the following clauses are connected with jail reforms just as they are connected with social reforms. You cannot have one set of provisions for people who commit offences now and quite another set of provisions for people who have committed offences already. Those people who have already committed offences and who are undergoing sentences at present in prison also deserve equal sympathy like those persons who have committed offences and whose cases are pending before the magistrates. It seems to me, Sir, that all these provisions, namely, the provisions contained in clauses 13 and 14, cannot be taken in isolation, isolated from the general reform of criminals as a whole in our society, and criminals are not only those who commit crime now, but they are also criminals who have committed crime. Therefore, all these various provisions with regard to criminals and punishments generally have got to be taken as a whole; all these have got to be co-ordinated and integrated into one whole; they cannot be taken in isolation. That, Sir, is one of the points I should have liked to make.

This brings me, Sir, to a very curious provision in clause 14, sub-clause (b), which shows that if we take these provisions in isolation, they tend to become very anomalous. Now take this provision in sub-clause (b): A probation officer shall "supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment".

Now, I have no objection at all to this sort of provision; as a matter of fact it is a very salutary provision, but where there is already a larc» amount of unemployment in ou' society, I ask, what would be the effect of this? The effect of this will tend to be very curious, that is to say. whereas so f*r as an ordinary person is concerned, who has committed no offence at all. There are no suitable avenues of employment and he will not be cared for so much, if a person becomes an offender he will be cared for all the more. Now, that is really

a very curious piece of legislation. Now, I have no objection even to that because, after all, employment has got to be found for everyone.

SHRI J ASP AT ROY KAPOOR (Uttar Pradesh): It is perhaps because a diseased person generally needs better attention than a healthy man.

DR. W. S. BARLINGAY: This as a matter of fact, has been the bane of all our health policy. I should say, even with regard to our health policy, that what we first of all should care for is the general health of the healthy citizens, not so much of the person who is diseased. Actually, what is wrong with our health policy holds good of the policy followed in this Bill. The provision here seems to be very curious. What will happen is that the person who is an offender may, in all likelihood, get employment because the probation offcer has been appointed specially for that very purpose, whereas a person who has committed no offence whatever, who has committed no social sins whatsoever, he may go without employment. I am pointing out . .

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): Providing him with employment is one of the correctives so that he may improve himself without recourse to crime.

DR. W. S. BARLINGAY: I was con cerned to point this out merely to sug gest that if we really want social reform in our country—and social reform after all is very essential—these provisions ;n clauses 13 and 14 and the other provisions with regard to the appointment of probation officers and so on, should not be isolated provisions, some provisions in this legislation, some sporadic provisions in some other Act and so on. As a matter of fact there ought to be a more comprehensive Bill dealing with all aspects of social debility, if I may call it so, and if the hon. Minister considers it proper, she may think of bringing before this House another very comprehensive Bill dealing with, what I call, social debility or mental debility. Now, this is what I want to suggest with regard to the Bill, and apart from what I have already suggested it does seem to me that the Bill is an extremely good 3ill and ought to be supported.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Deputy Chairman, Sir, I extend my support to this Bill but not in that whole-hearted manner as Dr. Barlingay has chosen to do, because I feel this Bill, although its intention is good, goes far beyond the limits which should have been set by the framers of the Bill in the present conditions in our country.

Sir, I am one of those unfortunate lawyers to whom my esteemed and honourable friend, the Deputy Minis-tar-in-charge, made not a very complimentary reference. Having struggled all my life to save people from being sent to jail I find myself in a very peculiar position here in another place tj have to stand against an attempt made in this Bill for almost wholesale safety provided for offenders from being sent to jail.

Sir, while I do not dispute the proposition that short term imprisonment should not be inflicted upon young people, I am not so sure that the same proposition should apply in an equal degree to adult persons accused of having committed very serious offences.

Now in the present situation in our country, which I had occasion to refer to a short while ago, are we not. passing through a stage when, since the war, moral standards have vastly deteriorated and the desire to get rich quick have overwhelmed a large section of our people very much co our regret and disappointment?

SHRI P. N. SAPRU: There is no evidence that moral standards have djteriorated.

SHRI SANTOSH KUMAR BASU: Well, I can quote a very high authority if I am permitted to name him, one occupying the highest position in India in the political field, who has recently expressed his regret that moral standards since the war have very much deteriorated, not only in this country, but in other countries also which have gone through the ordeal of war. Sir, it cannot be doubted that there is a mounting crescendo of crime in this country—cases of dacoity, cheating and criminal breach of trust and of violence—which are eating into the very vitals of our nation. In these circumstances a Bill of such a sweeping character, I submit, requires very great and earnest consideration on our part before we set our seal of approval to all the provisions of this Bill. Sir, it may be a conservative point of view, but at the same time I claim that it is a realistic point of view. And although I may not be in a position now to question the principle underlying this Bill when it has come after scrutiny and examination by a Select Committee, still it will be my endeavour to point out some of the salient features of this Bill which require our serious consideration. Sir, if we turn to clause 3, regarding which I have tabled an amendment, we will find that this clause very rightly prevents the application of its liberal provisions to the cases of those who have had previous convictions against them. That clause reads:

> "When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition." You will And, Sir, that very rightly, as I said, those against whom a previous conviction is proved have been debarred from the benefit of this clause. But you will find that the onus has been cast on the prosecutor to prove that there has been a previous conviction. In a vast majority of cases under sections 379, 380, 381, 404 and 420, the prosecutors are private persons'and it will be extremely difficult for them to have access to the necessary records for the purpose of proving a past conviction against an accused person. It will mean such an amount of harrassment that it would almost make it impossible for them to prove that there has been a previous conviction. I can cite an instance. It fell to me to defend an accused person in Calcutta High Court Sessions some years ago. A man very decently dressed in the European style, a very fine speaker in English, was accidentally caught in the streets of Calcutta. He was charged with cheating and ultimately in spite of all the efforts of his lawyers he was convicted although the case seemed to be from his point of view a very favourable one. After the Jury had found him guilty, the police officer in charge of the prosecution was called to the witness box again by the Counsel for the Crown, in those days, and he was asked whether this gentleman who was in the dock had any previous conviction and he cited a long list of previous convictions for cheating and breach of trust, beginning from Malaya, ending up in Agra and passing down South, covering many important cities. He had as many as eight convictions to his credit. Now, I ask. had it been a private prosecution, would it have been possible for the prosecutor to prove any one of his previous conviction? It was because the police was in possession of all the

facts, they could collect the necessary information from all these different places and prove his previous convictions resulting in a sentence of eight years' rigorous imprisonment. T have, therefore, put in an amendment to the effect that it would be the duty of the court to find out whether there is a previous conviction or not because if there is a previous conviction the court is debarred under this clause from adopting the course of letting the accused off with admonition. It is, therefore, for the court to satisfy itself, whether the previous conviction has been proved in a case or not, as to whether there has been a previous conviction against a person found guilty. I have, therefore, submitted this amendment for the consideration of this honourable House that in line 6 . . .

MR. DEPUTY CHAIRMAN: You can move it when we take up the clause.

SHRI SANTOSH KUMAR BASU: Therefore, it is only when a court finds after its own independent enquiry that there was no previous conviction against the guilty person that it should have the power to pass an order of admonition against him.

There is another point to which, I am afraid, my attention was not directed and for which I am indebted to my esteemed friend, Mr. Jaspat Roy Kapoor. This question of previous conviction has been brought in in clause 3 and it has been provided that if a previous conviction is not proved, then only an order of admonition could be passed; but in clause 4 where there is provision for release on probation of good conduct, there is no similar provision that in case of a previous conviction being proved no such order can be passed. I submit, Sir, that the same considerations which I put forward in connection with the order of admonition should apply with equal force here also. In case a previous conviction is there, an order for release on probation of good conduct should be automatically ruled out so far as clause 4 is concerned; I suggest in all humility that you may be pleased to admit an amendment to that effect now that the whole matter is before us and Parliament will have no further chance of considering this matter to introduce any necessary change.

Then, coming to clause 6 to which attention has been drawn so force fully by my esteemed friend, Mr. Avinashilingam Chettiar, the duty is cast upon the magistrate to make out a case for sentencing a guilty person to imprisonment, that is to say, if you analyse it, it is for the magistrate to find out reasons if he wants to impose any such punishment. Mr. Chettiar has very rightly cited some instances regarding youthful delinquency of a most glaring type and I would request the hon. Minister to consider whether cases like that should be brought within the purview of this clause and the magistrate should be required to make out a case for passing a sentence of imprisonment. Now, my esteemed friend, Mr. Sapru, has said that discretion is given to the magistrate in each case whether to pass a sentence of imprisonment or to merely pass an order of admonition or probation of good conduct and he has argued that we should remain satisfied by vesting this discretion in the magistrate and pass this Bill as it is. This discretion in the magistrate is something like equity varying with the Chancellor's foot. In England there is a time honoured saying, of which Mr. Sapru is undoubtedly aware, that equity varies with the Chancellor's foot. If the Chancellor has a big foot he will have one idea of equity and if he has a small foot he will have another idea of equity in a particular case. So also discretion varies with the magistrate's foot. We should have something more solid, more concrete than the airy uncertain factor of discretion to decide whether an offender found guilty of such serious offences should be allowed to go without any sentence of imprisonment and merely with an admonition or probation order.

SHRI P. N. SAPRU: The magistrates and judges have already got discretion under the existing laws.

SHRI SANTOSH KUMAR BASU: I am glad that Mr. Sapru has drawn my attention to that aspect of the matter. The magistrates and judges have discretion only within the ambit of the power given to them by the criminal law. The criminal law lays down that certain offences shall be visited with punishment of imprisonment but the discretion lies only in regard to the measure of that punishment and not whether the offender should at all be punished with imprisonment or not. The Penal Code lays down that for such and such offences the offenders shall be punished with imprisonment of either description and there is no room whatsoever for any discretion in that respect. But the fundamental idea underlying this Bill is that the magistrate should be given discretion as to whether to award any sentence of imprisonment at all. That discretion which this Bill gives is non-existent today in respect of a large number of offences if I may humbly remind my esteemed friend, Mr. Sapru. In these circumstances, I would submit that very careful consideration should be given to this Bill. I submit that

the hon. Minister in charge 4 P.M.
should take into account

these objections which are being raised on the floor of the House although they might, on their surface, be considered to be outmoded, reactionary or conservative. Considerations of protection of society require these objections to be raised and to be seriously considered.

Now, Sir, take again the provisions of clause 12: "Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law".

SHRI P. N. SAPRU: Punishment purges the offence.

SHRI SANTOSH KUMAR BASU: Punishment purges the offence, but that was not the law so long. We have limited the scope of the law as regards purging the offence to a very considerable extent. Offences involving moral turpitude could not be purged, but here any order of probation or admonition will save the offender from any disqualification under the electoral law or any other law. My first point would be with regard to this provision—whether this is within the scope of this Bill at all and whether it does not exceed the scope and the ambit of this Bill as presented before Parliament. What is this Bill? "A Bill to provide for the release of offenders on probation or after due admonition and for matters connected therewith". Is this removal of disqualification a matter relating to probation or admonition or any matter connected with probation or admonition? Removal of electoral disqualification is certainly not a matter which either comes within the meaning or scope of the words "probation or admonition" or matters connected with probation or admonition. I submit this clause goes far beyond the purpose of this Bill and as such it is out of place. What is more, this Bill not only provides for saving youthful offenders or other offenders from punishment in jail but also seems to give an open invitation to people to commit offences so far as their electoral disqualification is concerned. It seems to give this assurance to prospective offenders: "We give you this fair and open notice that you will not be penalised so far as your other rights are concerned if you commit the offence, provided the court is satisfied that you are not intended for being sent to jail." I submit that this is going far, too far, in the matter of condoning offences, if I may use that expression. My submission would be that this clause is entirely out of place in this Bill, exceeds the scope of this Bill, and as such it cannot be accepted as a part of this Bill.

Now, Sir, there is another aspect of the matter which turns on the expression "previous conviction". "Previous conviction" is not defined in this Bill. Ybu will find, Sir, that in the definition clause, clause (2), sub-clause (d) contains these words: "In this Act, unless the context otherwise requires, words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings respectively assigned to them in that Code." Therefore, for understanding the meaning of these words "previous conviction" in this Bill we have got to turn to the Indian Penal Code. The Indian Penal Code deals with this question of previous conviction in section 75, and what does that say? "Whoever having been convicted by a court in India of an offence punishable under Chapter XII or Chapter XVII of this Code"—which, relate to offences which are mentioned here, namely cheating, theft and so on, offences against property—"with imprisonment of either description for a term of three years or upwards shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term shall be subject for very such subsequent offence to transportation for life or to imprisonment of either description for a term which may extend to ten years." If this expression "previous conviction" has t;ot to be understood in this Bill with reference to what is contained in the Penal Code, because there is no definition given here, then it would mean that if a guilty person has been previously sentenced to a term of three years or upwards, it is then and then only that he will come under the mischief of those words "previous conviction". In other words, if he has been convicted and sentenced to less than three years' imprisonment, he can be given an admonition and let off. Is that the meaning? At least that has to be made clear if endless wrangling in courts of law is to be avoided over these words. And again, although provision has been made that previous conviction will debar this lighter order of admonition, the expression "previous conviction" contains within it such a confusion so far as the term of the previous imprisonment is concerned that the very good purpose of this particular clause will be defeated, if no clarification comes forward in that respect.

Now, Sir, I do not know whether the purpose of this Bill is to keep as many people out of jail as possible. It may be suggested that the very fact that crimes are mounting up in this country will probably induce the Government, for administrative reasons, to keep the jail population at as low a figure as possible. That may be the effect of this Bill, that there will not be so much demand upon accommodation in jails. The higher the number of crimes in this country, it may be argued, the greater is the need for this Bill for keeping the jail population at a very low level. I am not so cynical as to attribute such a motive to the Government. Undoubtedly, they do not mean that. This Bill is inspired by a very lofty idea of social justice, to train the people, who have at some unfortunate stage committed a crime, for a better life, for better chances in life, in an honest way. But the result undoubtedly would be that our jails will be thinner in their population although crimes may go up higher and higher in this country. If we cannot check these crimes by providing employment for the people, by creating a proper atmosphere in the country, by advancing our education—from that point of view this Bill comes a little too early because the proper stage has not been prepared for it yet. At the same time, so far as its underlying intention is concerned, I accord my support to this Bill after I have expressed certain doubts and difficulties on the floor of the House.

श्री जस्पत राय कपूर: उपसभापति महोदय, यह विधेयक आदि से अन्त तक कोमलता की भावना से भरा हुआ है, इसलिये यह उचित ही है कि इस की कर्णाधात्री हमारी महिला

[श्री जरपत राय कपूर]

उपमंत्रिणी, श्रीमती वायलेट आल्वा हों । यह विधेयक एक प्रकार से यदि मैं कहूं कि माता के स्नेह की भावना से भरा हुआ है, तो ठीक ही होगा क्योंकि माता की स्नेह की भावना अपनी संतान के प्रति इतनी अगाध होती है कि उस की संतान कोई भी अपराध क्यों न करे, उस को दंड देने की नीति माता की कभी नहीं होती । कभी कभी तो यह होता है कि अगर किसी की संतान कई हों, और उस में कोई संतान उद्दंड हो तो उस के साथ माता का स्नेह कुछ अधिक हो जाता है और कारण सम्भवत: यह हो कि वह चाहती हो कि उस का जो उद्दंड बालक है वह इस तरह ठीक हो जाये, क्योंकि और जो बालक हैं वे तो अपना काम ठीक से कर ही लेंगे । तो उद्दंड बालक की ओर माता विशेष ध्यान न दे तो वह खराब हो जायेगा । सम्भवत: यही कारण है कि इस विधेयक का वे खंड, खंड १४ का उपखंड "बी" रखा गया है, जिस के संबंध में कुछ आपत्ति हमारे माननीय मित्र डा० बालिगे ने की है । उस खंड और उपखंड में यह कहा गया है कि "वचनमुक्त अधिकारी" अथवा प्राबेशन आफिसर, इस बात का प्रयत्न करेगा कि जो अपराधी उस के सुपुर्द किया गया है, उस को वह काम दिलाने का भरसक प्रयत्न करेगा । मैं समझता हूं कि इस संबंध में माननीय मित्र डा० बालिगे जी ने जो शिकायत की है वह उचित नहीं है क्योंकि समाज में इस तरह के जो लोग हैं, जिन की प्रवृत्ति अपराध करने की है, उन की तरफ हमें विशेष ध्यान देना चाहिये जिस से उन की वह प्रवृत्ति दूर हो जाये और यदि उन को ठीक से काम दिलाया जाये तो सम्भवत: वे ठीक रास्ते पर लाये जा सकते हैं । इस से केवल उन्हीं का हित नहीं है बल्कि सारे समाज का हित है क्योंकि यदि इस प्रकार के लोग ठीक न किये जायें, ठीक रास्ते पर न लाये जायें तो समाज में बुराई बढ़ती जायेगी । जिस समय डा० बालिगे इस संबंध में कुछ कह रहे थे उस समय मैं ने बीच में टोकते हुए कहा था कि जिस प्रकार एक रोगी के लिये विशेष ध्यान दिया जाता है अपेक्षा उस आदमी के जो स्वस्थ हो, उसी प्रकार जिन में अपराध करने की प्रवृत्ति होती है, वे भी एक प्रकार के रोगी ही हैं । इसलिये जिस प्रकार शरीर के रोग के प्रति चिकित्सालय में विशेष ध्यान दिया जाता है, उसी प्रकार से अपराधी रोगी के प्रति विशेष ध्यान दिया जाना चाहिये । तो यह नहीं कहा जाना चाहिये कि भले आदमी की सहायता की अपेक्षा हम बुरे आदमी की सहायता के लिये विशेष ध्यान देने का प्रबन्ध कर रहे हैं ।

उपसभापति महोदय, कोमलता इस विधेयक में इतनी अधिक बढ़ी हुई है कि कहीं कहीं उचित सीमा को पार कर गई है । यदि मैं आप का ध्यान खंड ४ की ओर दिलाऊं, जिस के संबंध में हमारे माननीय पूर्व वक्ता श्री बसु ने अभी आप लोगों को बतलाया, तो उस से प्रत्यक्ष हो जायेगा कि खंड ४ में यह सीमा उल्लंघन कर दी गई है, क्योंकि खंड ४ में आप ने यह रखा है कि प्राबेशन का लाभ सभी को दिया जा सकता है, चाहे अपराधी ने पहले दस या बीस बार वह अपराध, उस से भी घृणित अपराध किया हो । मैं नहीं जानता कि यथार्थ में माननीय मंत्री महोदय की इस संबंध में क्या मंशा है । या तो यह बात भूल से इस में रह गई कि इस का लाभ उस को नहीं दिया जायेगा जिस के विरुद्ध पहले अपराध सिद्ध हो चुका हो, क्योंकि यह बात समझ में नहीं आती कि छोटे मोटे अपराध करने वाले के संबंध में तो जिस की चर्चा खंड ३ में की गई है, यह आश्वयक समझा गया कि उसे खंड ३ का लाभ मिलेगा यदि यह बात सिद्ध हो जाय कि अपराध उस ने प्रथम बार ही किया है । इसलिये खंड ४ जिस का संबंध उन लोगों से है जिन्हों ने बहुत बड़ा घृणित अपराध किया हो, उन के संबंध में भी यह क्यों न कहा जाये कि इसका लाभ उन्हीं को मिलेगा जिन्हों ने इस प्रकार का अपराध पहली बार किया हो ।

यह एक गम्भीर विषय है और मैं चाहूंगा कि उपमंत्रिणी महोदया इस सम्बन्ध में स्पष्ट हमें बता दें कि यथार्थ में इस का तात्पर्य क्या है ।

उपसभापति महोदय, इस विधेयक में वचनमुक्त अधिकारी का अर्थात् प्राबेशन आफिसर का एक विशेष स्थान है। उस का बहुत बड़ा उत्तरदायित्व इस में लिखा है, इसलिये आवश्यक है कि हम इस विषय पर कुछ गूढ़ता से ध्यान दें क्योंकि इस विधेयक का उचित रूप से कार्य रूप में परिणत होना इस पर निर्भर करता है कि वचनमुक्त अधिकारी किस प्रकार का है । इस में जहां तक हम लोगों का अनुभव है, इस स्थान के लिये विशेष अनुभवी आदमी नियुक्त नहीं किया जाता है । कभी कभी तो २१ या २२ वर्ष के नौजवान भी इस स्थान पर नियुक्त कर दिये जाते हैं। लेकिन अब जब कि उस के अधिकार इतने बढ़े हैं, जैसा कि इस विधेयक में बढ़ाये जा रहे हैं, तो उस के दायित्व बढ़ रहे हैं । ऐसी दशा में यह उचित ही होगा कि ऐसे ही लोग इस स्थान में नियुक्त किये जायें जो अनुभवी हों, जिन्हें इस संबंध में विशेष ज्ञान हो, जिन की ईमानदारी और नेक नियती पर पूर्ण रूप से भरोसा किया जा सके, क्योंकि यदि हम विशेष खंडों की तरफ दृष्टिपात करते हैं तो पता लगता है कि न्यायाधीश खंड ४ का लाभ किसी को देने के पूर्व इस वचनमुक्त अधिकारी की रिपोर्ट के ऊपर चलेगा और इसी प्रकार की बात खंड ६ में भी है। उस के बाद खंड ८ में यह लिखा गया है कि यह अधिकारी यदि अपराधी के विरुद्ध रिपोर्ट कर दे तो जिन नियमों के ऊपर वह प्रोबेशन पर छोड़ दिया गया है, उन नियमों में और कड़ाई की जा सकती है और यह भी हो सकता है कि उस को जो लाभ प्राबेशन का दिया गया है, वह भी खत्म कर दिया जायेगा । खंड ८ उपखंड "३", में उस की रिपोर्ट को इतनी महत्ता दी गई है कि यदि न्यायाधीश चाहे तो उस की रिपोर्ट के आधार के ऊपर जो कुछ भी रिआयत उस समय तक किसी अपराधी को दी गई हो वह सब समाप्त कर दी जाये । खंड ९ के उपखंड १ और उप खंड ३ में तो यहां तक कहा गया है और संभवतः ठीक ही है कि यदि उचित समझे तो न्यायाधीश इस अधिकारी की रिपोर्ट के ऊपर जो कुछ भी लाभ खंड ४ का उसे दिया गया है वह खत्म कर के उसे न्यायालय में बुला कर उस से कह दे कि अब तुम कारागार में जाओ । तो इतनी महत्ता जब इस अधिकारी की रिपोर्ट को दी जायेगी तो उचित यह है कि बहुत छान बीन के साथ इस स्थान पर ऐसे अधिकारी की नियुक्ति की जाय ।

क्या मैं इस सम्बन्ध में एक बात पूछ सकता हूं कि खंड १३ में इस प्रकार के अधिकारी की नियुक्ति के सम्बन्ध में आप ने कहा है :

"A probation officer under this Act shall be a person appointed to be a probation officer by the State Government or recognised as such by the State Government".

मगर मेरी समझ में नहीं आया कि "अप्वाइंटेड" और "रिकगनाइज्ड" में क्या अन्तर है। यदि आप किसी को इस स्थान पर नियुक्त करते हैं तो वह नियुक्ति ही हुई, अप्वांटमेंट ही हुआ, भले ही कोई सरकारी कर्मचारी, जो किसी दूसरे काम पर लगा हुआ हो, उसे ही आप कह दें कि हम इस को मान लेते हैं कि यह प्राबेशन अधिकारी आज के बाद होगा अथवा अपने और साधारण काम के साथ साथ, और जो उपाधि उस को मिली हुई है उसके साथ साथ प्रोबेशन आफिसर की उपाधि भी उसे मिल जायगी लेकिन यह उपाधि जब आप उसे देते हैं या यह कार्य उसे सुपुर्द करते हैं तो उसकी इस स्थान पर नियुक्ति ही होती है । इस प्रकार 'अप्वाइंटमेंट' और 'रिकगनिशन' में मुझे कोई अन्तर नहीं दिखाई देता है । लेकिन अगर कोई अन्तर हो भी तो फिर मैं जानना चाहूंगा कि खंड १७ में जब आप ने यह रखा है कि प्रादेशिक सरकार को यह अधिकार होगा कि

[श्री जस्पत राय कपूर]

नियुक्ति सम्बन्धी वह रूल बनाये, तो फिर यदि 'रिकगनिशन' 'अप्वांइटमेंट' से भिन्न है, तो आपने वहां भी यह क्यों नहीं लिखा कि 'रिकगनिशन' के सम्बन्ध में भी रूल बनाने का अधिकार प्रांतीय सरकार को होगा । जब मैं यह कहता हूं तो यह भूल नहीं जाता कि ऐसा न लिखा हुआ होने पर भी प्रांतीय सरकार को इस सम्बन्ध में नियम बनाने का अधिकार खंड १७ के उपखंड "ई" के अन्तर्गत रहेगा । लेकिन जब आप विशेष रूप से नियुक्ति सम्बन्धी नियम बनाने की बात इस में कह रही हैं तो 'रिकगनिशन' सम्बन्धी नियम बनाने की बात भी आप कर देतीं तो उचित था, अथवा खंड १३ से आप 'रिकगनिशन' शब्द को भी उड़ा दें ।

खंड १३ के उपखंड ३ में आप ने लिखा है कि यह अधिकारी 'shall be subject to the control of the district magistrate' जिलाधीश के अनुशासन में रहेगा । ठीक है, लेकिन क्या आप का मतलब इस से यह है कि जो मुख्य काम इस अधिकारी के सुपुर्द किया गया है अर्थात् रिपोर्ट देने का, क्या वह रिपार्ट यह अधिकारी न्यायालय को देने से पूर्व उस को डिस्ट्रिक्ट मैजिस्ट्रेट को दिखला देगा और जब डिस्ट्रिक्ट मैजिस्ट्रेट इस प्रकार की रिपोर्ट देने की स्वीकृति देंगे तभी वह देगा या क्या आप का मतलब है इन शब्दों से 'subject to the control of the district magistrate' क्या इन शब्दों में यह बात भी आती है जो मैंने अभी कही है ?

इस सम्बन्ध में मेरे माननीय मित्र बोस महोदय ने व्यर्थ ही, मैं समझता हूं, यह आशंका प्रकट की है कि प्रांतीय सरकारें इस कर्मचारी को राजनैतिक काम के लिये प्रयोग करेंगी । कोई भी दोष, कोई भी आक्षेप आप प्रांतीय सरकारों पर मनमाने तरीके से कर देते हैं । अब तक जितने भी प्राबेशन अफसर भिन्न भिन्न प्रान्तीय सरकारों के अन्तर्गत काम कर रहे हैं, क्या किसी एक के भी विरुद्ध आप को इस प्रकार की शिकायत करने का कुछ भी आधार मिला ? ऐसी बात नहीं है कि इस विधेयक के अनुसार प्रथम बार ही इस प्रकार के अधिकारी नियुक्त किये जा रहे हों । हां, उन का अधिकार, उन के कार्य की सीमा इस के द्वारा अवश्य बढ़ाई जा रही है, लेकिन अब तक भी तो प्राबेशन आफिसर्स बहुत से प्रांतों में संभवतः सारे देश में हुए हैं । क्या इस समय तक आप को कोई ऐसा एक भी उदाहरण मिला कि प्रांतीय सरकारों ने इन का दुरुपयोग इलैक्शन के लिये, अथवा और किसी राजनैतिक कार्य के लिये, अपने मतलब के लिये, अपने हित के लिये किया हो? यदि नहीं, तो इस प्रकार के निरर्थक आक्षेप करना किसी को शोभा नहीं देता, विशेषकर इतने योग्य और बुद्धिमान एजूकेशनिस्ट को जैसे कि हमारे माननीय मित्र श्री बोस हैं ।

खंड ७ में जो बात कही गई है उस सम्बन्ध में कितने ही माननीय मित्रों ने चर्चा की है कि इस प्राबेशन अफसर की रिपोर्ट गुप्त क्यों रखी जाये । यह बात मेरी समझ में भी नहीं आ रही है । कम से कम इस को सरकारी वकील से गुप्त नहीं रखना चाहिये क्योंकि यह रिपोर्ट अपराधी के पक्ष में भी हो सकती है, उस के विपक्ष में भी हो सकती है, और सरकारी वकील को भी यह अधिकार क्यों न हो कि यदि यह रिपोर्ट अपराधी के पक्ष में हो तो उस के सम्बन्ध में वह न्यायाधीश से कुछ कह सके कि यह रिपोर्ट अपराधी के पक्ष में उचित नहीं है, ठीक नहीं है ? जैसा मैं ने कहा और और मित्रों ने भी कहा है कि इस प्रकार के अधिकारी ऊंचे दर्जे के होने चाहियें और जब तक ऊंचे दर्जे के, परखे हुए नहीं हैं, तब तक यह भी संभव हो सकता है कि कुछ ले दे कर या किसी की सिफारिश के कारण अपराधी के पक्ष में वे रिपोर्ट दे दें । तो उस रिपोर्ट का पता यदि सरकारी वकील को नहीं है तो क्या वह न्यायाधीश से कह सकता

है, किस तरह से कह सकता है कि उस रिपोर्ट के ऊपर विशेष विचार उन्हें नहीं करना चाहिये ?

खंड ५ में, उपसभापति महोदय, यह लिखा गया है कि जब खंड ३ और ४ का लाभ किसी अपराधी को दिया जाये तो न्यायालय को यह अधिकार है कि अपना खर्चा उस से वसूल कर ले : खंड ५, उपखंड बी, में लिखा गया है :—

"(b) such costs of the proceedings as the court thinks reasonable."

मैं पूरा पढ़ दूं तो समझ में आसानी से बात आयेगी । खंड ५ यह है :

"5. (1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

* * * *

(b) such costs of the proceedings as the court thinks reasonable."

यह मुझे नितान्त अनुचित बात मालूम पड़ती है कि यदि खंड ३ या ४ के अन्तर्गत अपराधी को छोडने का अथवा प्राबेशन का लाभ दिया जाये तो उस समय न्यायालय उस के एवज में यह कहे कि यहां इतने रुपये धर जाओ जितने कि इस मुकदमे में तुम्हारे ऊपर खर्च हुए हैं । तो क्या खंड ३ और ४ का लाभ इस प्रकार न्यायालय को एक तरह से बेचना उचित होगा? मैं नहीं कहता कि कोई भी न्यायाधीश इस बात पर खंड ३ या खंड ४ का किसी अपराधी को लाभ देंगे कि वह काफी रुपया जमा कर सकता है लेकिन सिद्धान्ततः यह कुछ अच्छी बात नहीं मालूम पड़ती कि आप उस को इस प्रकार से मुक्त करने के समय उस के बदले में एक तरीके से उस से कहें कि अदालत के ऊपर, न्यायालय के ऊपर, जो खर्च हुआ है इस मुकदमे में वह अपराधी रख जाये ।

इस के अन्त में मुझे एक बात और कहनी है और उस से पूर्व अब्दुर रज्जाक साहब का जो संशोधन है—वह जब आयेगा तो उपसभापति महोदय में आप का समय नहीं लूंगा इस आश्वासन के साथ मैं आप की आज्ञा चाहता हूं कि उस सम्बन्ध में भी एक शब्द यहां कह दूं, और वह यह कि खंड ४ उपखंड २ और खंड ६ उपखंड २ में आप ने यह लिखा है . . .

श्री उपसभापति : आप पीछे पीछे जा रहे हैं। सात से पांच, पांच से चार और चार से दो । आप को आगे जाना चाहिये ।

श्री जस्पत राय कपूर : अच्छी बात है । यह बात मैं आप की मान लेता हूं । तो चलिये इतना आगे चल कि मंजिल पर ही पहुंच जावें, आखिरी मंजिल पर ही पहुंच जावें । तो लीजिये खंड १७ पर मैं आ जाता हूं, उस के बाद खंड १८ और खंड १९ ही हैं जिन के सम्बन्ध में मुझे कुछ नहीं कहना है ।

उपसभापति महोदय, खंड १७ उपखंड ३ में मंत्रिणी महोदया जिस हद तक गई हैं वह ठीक है—कोई भी प्रान्तीय सरकार इस विधेयक के अन्तर्गत कोई भी नियम बना तो अपने स्टेट लेजिस्लेचर में वह रख दे, लेकिन इतना ही तो पर्याप्त नहीं है । यहां तो, आपको याद होगा उपसभापति महोदय, कि हम लोगों ने कितनी ही बार प्रयत्न करने के बाद अब इस स्थिति पर अपने को पहुंचा दिया है कि किसी भी विधेयक में यह लिखे बिना नहीं रहता कि जो भी नियम बनाये जायें वे हमारे सामने रखे जायें, १५ दिन तक रखे जायें, और उस १५ दिन की अवधि में हमें अधिकार होता है कि उसमें जो भी संशोधन हम चाहें कर ले लेकिन आपने खंड १७ उपखंड ३ को उस रूप में नहीं रखा है जिस रूप में अब हम इस बात को यहां रखते हैं । वहां भी इस बात को रख देतीं तो उचित होता कि प्रान्तीय धारा-सभाओं में ये सब नियम १५ दिन तक रहें और उन्हें अधिकार हो कि इस अवधि के अन्दर वे इसमें जो भी संशोधन या परिवर्तन चाहें कर सकें ।

[श्री जस्पत राय कपूर]

मैं आपसे प्रार्थना करूंगा कि चूंकि प्रान्तीय सरकारों को या वहां की धारा-सभाओं को इस सम्बन्ध में कुछ कहने का अधिकार नहीं है—क्योंकि यह तो केन्द्रीय विधेयक है—तो उन धारा-सभाओं के सदस्यों के हितों और अधिकारों की रक्षा करते हुए आप अब भी इस खंड १७ उपखंड ३ का वही रूप इस विधेयक में दे दें जो रूप अपने उन सब विधेयकों में जिन का सम्बन्ध केन्द्रीय सरकार से है आप देती हैं, या सरकार देती है ।

मैं आशा करता हूं कि इन बातों के ऊपर आप ध्यान देंगी और मैं आप को बधाई देता हूं कि इस विधेयक में आप ने अपने में जितनी कोमलता है, मातृपन की भावना है वह सब कूट-कूट कर भर दी है, भले ही कहीं कुछ उचित सीमा का उल्लंघन आप ने किया है तब भी मैं उसका विशेष विरोध नहीं करता हूं गो तबियत में यह बात तो जरूर आती है कि माननीय मित्र बसु महोदय का इस सम्बन्ध में समर्थन करूं जो कि उन्होंने कहा है कि आपने बहुत ही कोमलता इस में भर दी है और कहीं इससे कभी कोई नुकसान न हो जाय ।

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Deputy Chairman, Sir, I have listened to the two speeches from my esteemed friends, Mr. Basu and Mr. Kapoor. They are* eminent lawyers and I am rather hesitant to say something on this Bill which mostly concerns law but the greatest virtue of Parliamentary democracy is that the common man's point of view or the layman's point of view is brought to bear on law making. I was surprised at the way our eminent friend, Mr. Basu, approached this Bill. He characterised it as a lenient measure and as a measure which will cheapen justice and which will reduce the jail population and he rather accused the Government that probably one of the motives of the Government in bringing this Bill, was to reduce the jail population which, according to him, is likely to rise because of more and more crimes. My lawyer friends, both in this House and the other House and also in the Joint Committee in which they were presetit, fought tooth and nail against the provisions of this Bill because they have become hardened after practising for years in the criminal courts and they are not prepared to open the windows of their minds to the new light that has come from the experiments not only in this country but in other countries also by adopting this measure which is known as probation of offenders.

DR. W. S. BARLINGAY: Lawyer? are notoriously conservative.

SHRI RAJENDRA PRATAP SINHA: The greatest. virtue of law making is this that you keep your law changing with the progress of ideas and the progress of society. I may remind my hon. friend that this measure is a gift of the earlier part of the 20th century. This measure has been tried not once but for nearly many years with great success not only in this country but in the European countries and also on the American continent. . I can quote you figures to show with what great success probation has been adopted in other countries. I will not bore you with too many figures but one or two I would like to quote for the benefit of my eminent lawyer friends.

Here are the figures of the rates of satisfactory conclusion of probation given for U.K. and the percentage of cases terminated satisfactorily,—that figure I am quoting, the figure for 1942 was 64\57 and in 1951 progressively it rose to 75-12,—the percentage of successful probation.

SHRI SANTOSH KUMAR BASU: After years of preparation.

SHRI RAJENDRA PRATAP SINHA: I am coming to that. Now, we have seen that this success has been achieved in all age groups—children, young persons, adolescents and adults. Surprisingly enough I have found that many people have opposed probation for adults. The greatest success in

England is among adults where the percentage is 79' 8 and among children it is 77·8, for young persons 81-4 and for adolescents it is 75·4. I have not got the Indian' figures because the Home Ministry here has not collected together all the figures of probation. But from the general reports that we have from the different States where probation is now in existence for a number of years, it is quite evident and clear that probation as a whole has been very satisfactory. I would like my friends to appreciate the point that far from probation meaning cheap or easy justice, it is the most difficult justice, the idea being that even if only a small percentage of people who commit offences are made into good citizens, society would profit by it. After all, the purpose of inflicting punishment is not punishment. It is not an end in itself. Society has now ceased to be vindictive and the approach of society and of the State today is corrective and we should spare no pains to win back even a small percentage of criminals to the normal way of life.

If you go through the provisions of this Bill you will find that ample care has been taken to see that the advantage and the benefit of this measure go only to those who, the court considers, can be won back from a state of criminality. Sir, the study of behaviourism, the study of psychology and the study of criminal behaviour have now advanced very much and I would request my hon. friends who have devoted their life-time dealing with criminal justice, to take advantage of the new experhnents and the new studies that are now going on. As a layman I have come to this conclusion that a person is not a criminal by himself. There are very few people who are criminally-minded as such. A large number of criminal acts are committed because of provocative circumstances in which that particular person finds himself. If the court feels that the particular person has committed the crime, not because he is criminally-minded, but because of certain extraneous condi-

1 tions, that he was provoked to commit the crime, and if the court feels that it is possible to win the man back, then it is desirable that the court should have the discretion to free him after giving admonition or if the

/ case is a worse one, put him on probation for good conduct. I would say, even if 25 per cent, or even less of the criminals are won back by this measure, I would consider it as a great success. We have taken very great care to see that no one is let off unless the court is convinced that he is not going to commit the crime again. And I have given figures of successful termination of probations in other countries.

The experience in this country is that courts are very wary and reluctant to make use of the probation provisions that exist in the States. The complaint of social workers, of correctional institutions and of correctional conferences in this country is that the courts have not taken recourse to the provisions existing in the different States. So, we cannot accuse the courts that they have taken this measure as a relief from committing persons to imprisonment or from convicting persons. The courts take extra precaution because their own reputation is at stake and it should not be felt that they do not want to commit or convict a person who is likely to commit the offence after being let off on probation. Then there is always the opposite counsel who will plead that such a person should not be let off under clause 3 with admonition or on probation. T£ie counsel for the opposite party can always plead that the circumstances enumerated in clauses 3 and 4 are not applicable and therefore, such and such persons should not be let off on probation or after admonition. Of course, I have not been able to appreciate the provisions in clauses 4 and 5, that a person could be let off by the court without considering the report of the probation officer. Here I would like the Government to appreciate one fact. The success of probation largely depends upon the good-

(.Shri Rajendra Pratap Sinha.] will that it is able to create in society. This is a legal measure. If there are larger numbers of failures of probation, then the probation law will cease to enthuse the people and the law will cease to have the goodwill of society as a whole. I would not like to take any risk in this matter. I am aware of this fact from my study of probation in practice in other countries that the success of probation, cent per cent., depends upon the good work of the probation officers.

In other countries I have found that the probation officer forms an integral part of the whole system of probation. When we are taking up this measure in our criminal justice, it is important that we should see that this measure succeeds and that it does not fail. We cannot take any risks and this can only be ensured if we, as Mr. Kapoor pointed out, get capable, honest and good probation officers, officers of the proper calibre. I would not like any offender to be let off without a proper report from the probation officer. I am prepared to fully confide in the probation officer. The States must ensure that the provisions of this Bill are brought into force only in those areas in the States where proper provision for the appointment of probation officers has been made. It will be a dangerous thing, Sir, if people who have committed crime—I will not use the word criminal—are let off without proper supervision by the probation officers. As is the experience, the success of probation entirely depends upon the probation officers and, therefore, Sir, you will find that I have given notice of an amendment for the dropping of the words "if any" in clauses 4 and 6 of the Bill. It should be made incumbent upon the courts to call for the report from the probation officers and then alone to let these people off on probation and it should be made incumbent upon the State not to enforce this law anywhere where proper provision of probation officers has not been made.

Sir, a few friends have objected to treating the report of the probation officers as confidential, a provision made in clause 7. Now, Sir, there are virtues on both sides, to keep the report confidential or to keep it public. There can be arguments on both sides. What the Committee did was to strike a balance. I know it often happens that the probation officers—that is the experience—often have been intimated by the criminals and these officers are afraid of giving true reports because they feel that they may be badly treated by the offenders, by the criminals or their friends.

DR. R. P. DUBE: We are no talking about the criminals.

SHRI RAJENDRA PRATAP SINHA: I am sorry, I should have said, people who have committed offences. We can put it that way. The probation officers are afraid of them and, therefore, Sir, this question was considered by the Committee which decided that the report should be kept confidential and that the courts should have the discretion to give out such parts of the report which it considers should be given out to the person under trial. Then, Sir, the counsels defending these parsons in the court can always take recourse to this provision and demand from the court that a good or fair proportion of 'he substance of the report should be given out.

SHRI P. N. SAPRU: Where is that provision?

SHRI RAJENDRA PRATAP SINHA: I would invite your attention to the proviso to clause 7. The counsels can always argue that the court should use its discretion.

SHRI P. N. SAPRU: May I just interrupt the hon. Member? The proviso reads, "Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an

opportunity ..." The hon. Member said just now that counsel couid demand. All that this clause says is that the court, if it so chooses, may communicate it. There is no demand.

SHRI RAJENDRA PRATAP SINHA: If I were a counsel pleading before ex-Justice Sapru, I would always request his lordship to make use of this particular provision and use his discretion in giving the substance of the report to the effender, and the court will always find it difficult to resist such a request from the counsel.

SHRI P. N. SAPRU: May I just remind my hon. friend that the clause does not say that counsel or the accused can demand this as a matter of right? All that it says is that the court may, if it so chooses, give the accused person the substance of this report.

SHRI RAJENDRA PRATAP SINHA: Sir, the balance of convenience lies in the fact that the report should be kept confidential and discretion should be given to the court itself and not that the right should be given to the offender or the counsel. That should be the approach.

SHRI JASPAT ROY KAPOOR: Even then the prosecutor cannot have the advantage of this.

SHRI RAJENDRA PRATAP SINHA: Certainly, he can have when the effender will have.

SHRI JASPAT ROY KAPOOR: It is not left to the court. No such discretion is vested in the court to see that the prosecuting counsel also gets it. Is it not quite wrong?

SHRI RAJENDRA PRATAP SINHA: Quite right What I am saying is this. There is the other side of the picture also and we have got to safeguard against that. Now, there is the danger that the probation officer may not give a true report if the report is made public and so, we should certainly have a provision like this one. This is my submission.

SHRI SANTOSH KUMAR BASU: May I point out one thing? If it is going to be judicial discretion—I suppose it is going to be judicial discretion—then it requires that both sides should be put on a par in deciding a matter.

SHRI RAJENDRA PRATAP SINHA: Certainly, it is a judicial matter. I do not appreciate what my hon. friend means by this. If the discretion is • with the court, the court will always use the discretion in a judicial manner.

SHRI SANTOSH KUMAR BASU: By giving it to the prosecution? Is there any provision?

SHRI RAJENDRA PRATAP SINHA: That question does not arise. It says, 'provided that the court may, if it so thinks fit, communicate the substance thereof to the offender ..."

SHRI JASPAT ROY KAPOOR: Only.

SHRI SANTOSH KUMAR BASU: Not to the prosecutor.

SHRI JASPAT ROY KAPOOR: That is the point.

SHRI RAJENDRA PRATAP SINHA: That should be enough.

SHRI JASPAT ROY KAPOOR: Enough it is for the accused but it is not at all enough for the prosecutor. The point is this. The court is given the discretion to give the substance of the report to the accused but no such discretion is vested in the court to exercise it in favour of the prosecutor. The prosecutor will know nothing about it.

SHRI RAJENDRA PRATAP SINHA: I now understand the argument of the hon. Member and it is that this should be communicated also to the prosecutor, In my opinion, it should not be. It should not be communicated because the prosecutor has

[Shri Rajendra Pratap Sinha.] got all the evidence. The probation officer is a friend, philosopher and guide of the man who has committed the offence. The prosecutor cannot use the friend of the accused to his disadvantage. That will be most unfair. What we want, Sir, is that all the people who commit crimes should look upon the probation officer as a friend, should look upon the probation officer as a man who will help the accused, as a man "who will help the accused get out of the mire into which he has got himself.

SHRI P. N. SAPRU: Sir, in a criminal case, the prosecutor is also interested and, therefore, it will be completely unfair . . .

SHRI RAJENDRA PRATAP SINHA: ■ No, Sir, I entirely disagree with my hon. friend. The State has got all the resources at its command the police, the C.I.D., etc., which it can use against the offender and to collect all the evidence against the offender but, Sir, the probation officer cannot become part and parcel of the prose cution. It can never be done. What I submit, Sir, is that my friends have not got into the essence or the spirit of probation. The probation officer is a friend of the person who commits an offence, not of the other side, the prosecution. It is they who need his assistance in this matter. The only purpose in having this clause here is for safeguarding society itself. If the probation officer considers that a particular person is not fit enough to be let off on probation in spite of the liberal provisions of clause 3 and 4 then he can confidentially inform the court accordingly. Some of my friends of the legal profession have said that the court is being influenced —what they say in legal terminology, extra judicially or what, I do not know—that the court should not listen to the probation officer in private.

SHRI SANTOSH KUMAR BASU: No, nobody suggested that. If it is his discretion to allow only the accused person to see the report of the probation officer, then it is not in the exercise of his judicial discretion which requires that both sides should be given the same opportunity and, after hearing both sides, the court will have to decide the issue. You may call it a discretion of a certain kind which is necessary in the exigency of the present case but it is not judicial discretion as it is commonly understood.

5 P.M.

Shri RAJENDRA PRATAP SINHA: Well, sir, the whole term 'judicial discretion' is expanding as the law itself is expanding. I am afraid they cannot get into the very spirit of the law of probation. The law of probation is a new thing to them. They must try to understand and comprehend it. Pardon my saying this, but that is what they have to do. What is happening here is this that they want : . .

MR. DEPUTY CHAIRMAN: It is five O'clock.

SHRI RAJENDRA PRATAP SINHA: May I have a few minutes more, Sir? About five minutes.

MR, DEPUTY CHAIRMAN: Yes, please finish.

SHRI RAJENDRA PRATAP SINHA: I hope I shall have the indulgence of this House for a few minutes more.

The whole purpose of the probation officer is that he helps in reclaiming or reforming the offender. Now, you say that whatever information he has collected should be given to the prosecutor also. Now, here my objection comes. That can only be used by the court itself and no one else. The court can use that information to come to a conclusion whether to let off that person on probation or not. Please remember that the court has to make up its mind whether to sentence that offender for a certain guilt or

not and this comes later. The court is not making up its mind on the report of the probation officer whether to sentence that particular person or not. That is a different story alto gether on which the law of evidence will be there and everything else is there. The court not taking a deci sion; both the sides are not concerned. I would like my hon. friends to appreciate this that the court is not concerned with making up its mind whether the person is guilty or not or whether he should be sentenced or not. It is not making up its mind on this point on the report of the proba tion officer. That is a different story altogether. It collects the evidence from the prosecutor, and hears the witnesses and hears the arguments of the other side, and then comes to an independent conclusion, whether the man is guilty or not, or whether he should be sentenced or not. It makes up its mind independent of the probation officer. Till then the probation officer does not come into the picture at all. After the court has made up its mind if that particular person is to be sentenced or not, it merely suspends the sentence by letting him off on probation, and at this stage the probation officer comes to say whether he should be let off on probation or not.

Thank you, Sir.

MR. DEPUTY CHAIRMAN: *(Turning to the Treasury Benches)* You will reply on Monday.

Here are a few messages from the Lok Sabha.

MESSAGES FROM THE LOK SABHA

I. THE APPROPRIATION (NO. 3) BILL, 1958.

II. THE RICE-MILLING INDUSTRY (REGULATION) BILL, 1956

SECRETARY: Sir, I have to report to the House two Messages received from the Lok Sabha signed by the Secretary of the Lok Sabha. They *aie* as follows:—

I "In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Appropriation (No. 3.) Bill, 1958, as passed by Lok Sabha at its sitting held on the 2nd May, 1958.

2. The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India."

II

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Rice-Milling Industry (Regulation) Bill, 1958, as passed by Lok Sabha at its sitting held on the 2nd May, 1958."

Sir, I beg to lay a copy of each of the Bills on the Table.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. on Monday.

The House adjourned at five minutes past five of the • clock till eleven of the clock on Monday, the 5th May 1958.